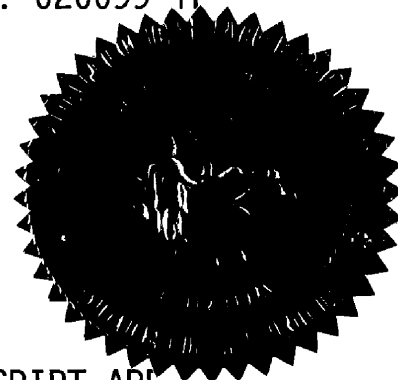


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020099-TP

In the Matter of

COMPLAINT OF ALEC, INC. FOR
ENFORCEMENT OF INTERCONNECTION
AGREEMENT WITH SPRINT-FLORIDA,
INCORPORATED AND REQUEST FOR
RELIEF.



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VOLUME 1

Pages 1 through 135

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER MICHAEL A. PALECKI
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, August 7, 2002

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
Official FPSC Reporter
(850) 413-6734

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I N D E X

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NAME:

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D. RICHARD McDANIEL

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	3	ALEC's Response to Interrogatories 1, 2 and 13, Sprint's Response to Interrogatories 12 and 25, Sprint's Responses to PODs 4 and 30, Revised Interrogatory Responses 11 and 12	15	
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COMMISSIONER BAEZ: We'll call this hearing to order.
Counsel, can you read the notice, please.

MS. DODSON: By notice issued July 8th, 2002, this
time and place has been set for hearing in Docket Number
020099-TP, Complaint of ALEC, Incorporated for enforcement of
interconnection agreement with Sprint-Florida, Incorporated.
The purpose of this hearing is as set forth in the notice.

COMMISSIONER BAEZ: Take appearances starting on my
left, please.

MS. MASTERTON: This is Susan Masterton representing
Sprint, and with me is Charles Rehwinkel, also representing
Sprint.

MR. MOYLE: Jon Moyle from the Moyle, Flanigan law
firm representing ALEC, and with me is John Dodge from
Washington, DC, also representing ALEC.

MR. DODGE: Good morning, Your Honor.

COMMISSIONER BAEZ: Good morning.

MR. DODGE: Try that again. Good morning, Your
Honor. I'll try to get the button system down before we get
out of here today.

We're looking at a very --

COMMISSIONER BAEZ: Mr. Dodge, can you hold just one
second?

MR. DODGE: Surely.

1 COMMISSIONER BAEZ: We've got a few things that we've
2 got to get to, and we're not through taking appearances yet, if
3 you don't mind. Thank you.

4 MR. DODGE: John Dodge, appearing on behalf of ALEC,
5 Inc., with the firm of Cole, Raywid and Braverman.

6 COMMISSIONER BAEZ: Thank you, Mr. Dodge.

7 MS. DODSON: Linda Dodson, Wayne Knight and Tobey
8 Schultz, appearing on behalf of the Commission.

9 COMMISSIONER BAEZ: Okay. Mr. Dodge, if you can just
10 indulge us for one -- I don't know the nature of your
11 statement. Were you opening up or is there -- are we going to
12 take up some preliminary matters?

13 MR. DODGE: I have a brief opening statement, Your
14 Honor, but I'll just wait.

15 COMMISSIONER BAEZ: Okay. I'll give you your cue
16 then.

17 We've got some preliminary matters. Any? Or we can
18 move on to the procedural matters. I know that there's a
19 couple of motions or --

20 MS. DODSON: Yes. There are -- there have been two
21 motions filed since the prehearing. On August 1st, 2002,
22 Sprint filed an emergency motion for protective order and a
23 request for oral argument on the emergency motion for
24 protective order. And on August 5th, ALEC filed a motion to
25 compel Sprint-Florida to respond to discovery requests.

1 The parties' areas of dispute revolved around a
2 number of interrogatories and PODs associated with those
3 interrogatories. And as Staff understands, the parties have
4 reached a resolution on all the issues of dispute; however,
5 Staff believes there may be some late-filed exhibits. The
6 parties might want to give a summary of the agreement that was
7 reached at this time. And Staff has alerted the prehearing
8 officer as to the substance of the agreement.

9 COMMISSIONER BAEZ: Great. Thank you, Ms. Dodson.
10 Mr. Moyle, Mr. Dodge, do you want to take a crack at
11 working this out? Yeah.

12 MR. MOYLE: Yeah. We've -- in an effort to avoid a
13 lot of prolonged discussions this morning in front of you all
14 about certain discovery issues and what not, I think we've been
15 able to pretty much reach an accommodation, after yesterday
16 reviewing certain documents that Sprint had, we went over to
17 their office late last night and reviewed certain documents,
18 and I think we've pretty much resolved things.

19 Let me take a stab at indicating what it is I think
20 we've agreed to, and Ms. Masterton can, can pitch in, agree or
21 disagree, but there were a number of documents that we
22 requested that Sprint had objected to on a variety of grounds.
23 In discussions we were able to narrow the request somewhat.
24 They showed us documents last night that we were able to go
25 through and cull from them certain ones that we may use today

1 related to issues that were in dispute. That was approximately
2 100 pages worth of documents that we were able to go through.
3 Additionally, there was like 8,000 pages of documents that we
4 kind of went through, but what we agreed to do on that was we
5 pulled a handful of documents out of that 8,000 that we've
6 agreed can come in as late-filed exhibits. And Sprint has
7 those in their possession, they agreed to copy them after
8 making certain redactions of the names of particular ALECs.
9 And we agreed, I think, that those can come in as late-filed
10 exhibits after today's hearing.

11 With respect to the issues that related to the
12 billing disputes, we went through all of those, we've copied
13 some and we'll use those today. But I think that pretty much
14 represents what we agreed to.

15 COMMISSIONER BAEZ: Ms. Masterton.

16 MS. MASTERTON: Yeah. That's -- there was one other,
17 and we provided -- the issue was confidentiality, and we were
18 able to work that out. We provided a response to the other
19 Interrogatory 20 as well or redacted response, and I don't know
20 whether y'all are intending to -- I don't know how y'all are
21 intending to use it at the hearing, but we have provided that
22 response. So I think that, that represents the, the areas of
23 agreement.

24 And I guess what you're saying is the one, there will
25 be one late-filed exhibit and then the others will come in as

1 you use them at the hearing today; is that --

2 MR. MOYLE: That's right.

3 MS. MASTERTON: Okay. So --

4 COMMISSIONER BAEZ: Are we straight with that? Now
5 is it -- would I be correct in saying this takes care of either
6 of y'all's pending motion or both?

7 MS. MASTERTON: Yes. From Sprint's perspective, yes,
8 it does.

9 COMMISSIONER BAEZ: All right. Procedurally,
10 Ms. Dodson, I think -- is it -- we can have the motion
11 withdrawn and have that stand as your agreement. I mean, are
12 you all amenable to that?

13 MR. MOYLE: Yeah. I think that makes -- in the
14 context of the discussions, I would like to just state on the
15 record we were also, I think, able to agree to stipulated
16 exhibits coming in. So we're not going to have a lot of
17 time-consuming debate about whether something comes in or not,
18 and we have a list of that in the exhibits. So I think it was
19 a productive day yesterday in terms of working out issues that
20 remained in dispute.

21 COMMISSIONER BAEZ: Well, I congratulate you both. I
22 mean, that's, that's -- we all thank you. I'm sure I can speak
23 for the rest of the Commissioners.

24 So you will -- Sprint is withdrawing the emergency
25 motion and that renders the response not necessary, so we don't

1 have to, we don't have to rule on that.

2 Now we have exhibits. I think at this point we're
3 only going to take Staff's, the Staff exhibits up first and
4 mark them.

5 MS. DODSON: Yes. The parties and Staff have agreed
6 to stipulate the following exhibits, which can be marked for
7 the record at this time.

8 Stipulation 1 is the agreement between ALEC and
9 Sprint.

10 COMMISSIONER BAEZ: Okay. Are these -- I have Stip
11 1 and Stip 3. Is that -- and Stip 1, I'm showing, actually are
12 responses to Staff interrogatories. Do you have that one?

13 MS. DODSON: Stip -- I'm sorry. Could you repeat,
14 please?

15 COMMISSIONER BAEZ: I'm holding Staff's Stipulated 1.

16 MS. DODSON: Okay.

17 COMMISSIONER BAEZ: And that consists of responses to
18 Staff's first set and responses to Staff's first POD.

19 MS. DODSON: Okay. That -- yes.

20 COMMISSIONER BAEZ: Is that -- we'll mark that, we'll
21 mark that Exhibit 1 --

22 MS. DODSON: Okay.

23 COMMISSIONER BAEZ: -- for identification.

24 MS. DODSON: We have --

25 COMMISSIONER BAEZ: Now we have the agreement; right?

1 MS. MASTERTON: If I could help a little bit. I
2 think that two of them are stapled together, yes.

3 COMMISSIONER BAEZ: Are they stapled together? I'm
4 sorry. No. We've got -- oh, okay. I'm sorry. Stip 2, yeah,
5 they're stapled together. I missed that. We can just include
6 Stip 2 as a Composite --

7 MS. DODSON: Okay.

8 COMMISSIONER BAEZ: -- Exhibit Number 1. Is that
9 clear?

10 MS. MASTERTON: Can I just ask, so Number 1 is going
11 to be both ALEC's and Sprint's responses to Staff's discovery
12 request; correct?

13 COMMISSIONER BAEZ: Yes. Consisting of Stip 1 and 2.
14 That's Composite Number 1. Yeah.

15 (Exhibit 1 marked for identification.)

16 COMMISSIONER BAEZ: Ms. Dodson, now we're on the
17 agreement; is that correct?

18 MS. DODSON: Correct. Correct.

19 COMMISSIONER BAEZ: Okay. We'll mark Staff's
20 stipulated exhibit, Stipulated 3 as Exhibit Number 2 --

21 MS. DODSON: Okay.

22 COMMISSIONER BAEZ: -- for identification. And that
23 is the Master Interconnection and Resale Agreement between
24 Sprint-Florida and ALEC, Inc.?

25 MS. DODSON: Correct.

1 (Exhibit 2 marked for identification.)

2 COMMISSIONER BRADLEY: Mr. Chairman --

3 COMMISSIONER BAEZ: Yes.

4 COMMISSIONER BRADLEY: -- so how are we marking Stip
5 2?

6 COMMISSIONER BAEZ: Stip 2 is marked along with Stip
7 1 as Composite Exhibit 1.

8 COMMISSIONER BRADLEY: Okay.

9 COMMISSIONER BAEZ: Okay?

10 COMMISSIONER BRADLEY: Thank you.

11 COMMISSIONER BAEZ: Any other exhibits? I think,
12 Mr. Rehwinkel, you had one that you passed out.

13 MS. MASTERTON: Yeah. I think the parties had agreed
14 to some stipulated exhibits, and I did some of them and ALEC
15 did some of them. So I think I'll address ours, the ones that
16 I put in, and then I'll let John address theirs.

17 I handed them out, I think they're in front of you.
18 And what we have, the first one is ALEC's responses to Sprint's
19 Interrogatories Numbers 1 and 2, revised responses to 11 and 12
20 and response 13, and I'd like those identified as a composite
21 exhibit.

22 COMMISSIONER BAEZ: I'm sorry, Ms. Masterton. Can,
23 can you go over -- I'm holding an E-mail and something that
24 says "Petitioner's Exhibit 1."

25 MS. MASTERTON: No. Yeah. Commissioner Baez, if you

1 look, I think I, I put it kind of up on the shelf in front of
2 you. I'm sorry. I should have put it down on the --

3 COMMISSIONER BAEZ: I should look up more often,
4 don't you think? Okay. I'm sorry.

5 MS. MASTERTON: Those documents that you referred to,
6 I think, are some that Mr. Moyle is going to speak to later.

7 COMMISSIONER BAEZ: Okay. Very well. So let's start
8 again.

9 You've got ALEC's responses, Sprint's responses to
10 Interrogatories 12 and 25 and Sprint responses to ALEC POD
11 Number 4, and we're going to mark that as Exhibit 3.

12 MS. MASTERTON: Were you going to do them all as a
13 composite?

14 COMMISSIONER BAEZ: Is it -- do you have a problem
15 doing it as a composite?

16 MS. MASTERTON: That's fine. I just wanted to note
17 that Exhibit 18 is a confidential exhibit. And we have -- I
18 have to apologize. This was something we provided to them in
19 discovery and so we had not yet provided it to the Commission,
20 had not yet filed a request for confidentiality, but we are
21 filing an intent to request confidentiality this morning.

22 COMMISSIONER BAEZ: Okay.

23 MS. MASTERTON: I don't know because --

24 COMMISSIONER BAEZ: Would you rather, would you
25 rather peel that one off?

1 MS. MASTERTON: I'm thinking that might be a better
2 idea.

3 COMMISSIONER BAEZ: Okay. Let me just make sure.
4 Now this is not part of -- all right. So we've got Exhibit 3
5 to consist of -- Mr. Masterton -- Ms. Masterton, help me out
6 here.

7 MS. MASTERTON: Okay.

8 COMMISSIONER BAEZ: So of the three items that you
9 have listed here, only the first two --

10 MS. MASTERTON: Actually I think it would be the
11 first two plus documents Number 4 and 30.

12 COMMISSIONER BAEZ: Okay.

13 MS. MASTERTON: And then have just document Number 18
14 as -- unless you think it's easier to make all the POD
15 responses --

16 COMMISSIONER BAEZ: That's fine. We can do that.

17 MS. MASTERTON: Okay. They're not all confidential.

18 COMMISSIONER BAEZ: All right. Exhibit 3 to consist
19 of ALEC's responses to Interrogatories 1, 2 and 13, and
20 Sprint's responses to ALEC Interrogatories 12 and 25 and Sprint
21 responses to POD 4 and 30. That will be marked as Exhibit 3
22 Composite.

23 MS. MASTERTON: Commissioner Baez, I'm sorry. Did
24 you, when you read that list, did you include revised
25 Interrogatory Responses 11 and 12?

1 COMMISSIONER BAEZ: No, I didn't. Let the record
2 reflect that it also includes revised 11 and 12.

3 (Exhibit 3 marked for identification.)

4 COMMISSIONER BAEZ: And, lastly, Exhibit Number 4
5 will be responses to, Sprint response to Interrogatory or, I'm
6 sorry, response to Production of Documents Number 18.

7 MR. MOYLE: Okay.

8 COMMISSIONER BAEZ: And that's a confidential
9 exhibit.

10 (Exhibit 4 marked for identification.)

11 MS. MASTERTON: That's right. And that's it for
12 Sprint, so I'm going to turn it over to Mr. Moyle.

13 COMMISSIONER BAEZ: Okay. Mr. Moyle.

14 MR. MOYLE: Okay. And just, just so I'm clear and
15 the record is clear, what's been accepted as Exhibit 3 is --

16 COMMISSIONER BAEZ: Everything, everything but
17 POD-18.

18 MR. MOYLE: Okay. And POD-18 is in the red folder
19 and that is confidential.

20 COMMISSIONER BAEZ: Is in the red folder and that
21 will be Exhibit 4.

22 MR. MOYLE: Okay. And that's confidential.

23 COMMISSIONER BAEZ: Right.

24 MR. MOYLE: Let me, let me go back to our exhibits.
25 I think you referenced an E-mail in something that was marked

1 as Petitioner's Exhibit Number 1.

2 COMMISSIONER BAEZ: Uh-huh.

3 MR. MOYLE: We would like it to come in as Composite
4 Number 1 for ALEC.

5 COMMISSIONER BAEZ: That will be marked as Exhibit 5
6 Composite, and we'll call it discovery E-mail to Richard
7 McDaniel. And that includes the invoices; right?

8 MR. MOYLE: Right. The invoice dated July 15th,
9 2002, from Time Warner Telecom.

10 COMMISSIONER BAEZ: Yes.

11 (Exhibit 5 marked for identification.)

12 MR. MOYLE: Okay. All right. The next exhibit that
13 we have, and I think you've been provided copies, but I have
14 extra, is the response of Sprint to POD Number 1. And I'll
15 give you a copy.

16 COMMISSIONER BAEZ: Okay. I have -- and that'll be
17 marked Composite Exhibit 6. And that is, again, is response,
18 ALEC response to Sprint Production of Documents Number 1.

19 (Exhibit 6 marked for identification.)

20 MR. MOYLE: Okay. And then our final, our final
21 exhibit is a confidential document that represents a settlement
22 between the parties that I'll describe simply as that, and go
23 ahead and have it come in as a confidential exhibit.

24 COMMISSIONER BAEZ: And that will be marked as
25 Exhibit 7, confidential agreement between ALEC and Sprint.

1 MR. MOYLE: Okay. That comes in as 7?

2 COMMISSIONER BAEZ: Yes.

3 (Exhibit 7 marked for identification.)

4 MR. MOYLE: Thank you. And that's, that's it for
5 ALEC.

6 COMMISSIONER BAEZ: That's it for ALEC? Okay. We
7 got that out of the way.

8 Any other preliminary matters --

9 MR. MOYLE: I may have a minor one.

10 COMMISSIONER BAEZ: -- we need to address?

11 MR. MOYLE: Mr. Dodge is with the firm in Washington
12 that has been, in other cases, granted admission here on a
13 pro hac vice matter. I'm not sure Mr. Dodge himself has been
14 so designated. I spoke with Sprint and they recognize, I
15 think, with 15 years experience in the telecom business he is
16 more able than me to represent ALEC today. So we would ask
17 that he be admitted pro hac vice for the proceeding.

18 COMMISSIONER BAEZ: And the Bench will recognize
19 Mr. Dodge. Although I do have a question for Staff: Is there
20 any, is there any formal paperwork that needs to be provided?

21 MR. KNIGHT: Yes. He could still provide a request
22 for qualified representation.

23 COMMISSIONER BAEZ: Okay. If you can just take care
24 of that off-line, that'll be fine. There's no, no urgency.
25 For purposes of the hearing, Mr. Dodge is recognized.

1 Ms. Masterton, anything from Sprint before we get
2 started?

3 MS. MASTERTON: No, I don't think, I don't think we
4 have anything else. Thank you.

5 COMMISSIONER BAEZ: Okay. Great. We agreed that
6 opening statements were not to exceed five minutes per party.
7 So, Mr. Moyle, if you would like to begin.

8 MR. DODGE: Actually, Your Honor, I'm going to take a
9 stab at a brief opening statement.

10 COMMISSIONER BAEZ: I'm sorry, Mr. Dodge. Please
11 forgive me.

12 MR. DODGE: Good morning, again. My name is John
13 Dodge with the firm of Cole, Raywid & Braverman appearing
14 before you this morning on behalf of ALEC, Inc., a certified
15 ALEC here in Florida.

16 I will be using the term "ALEC" in two different
17 versions throughout the course of the hearing; first, to refer
18 to the client, and also to the alternative LECs that the
19 Commission has authorized to carry intrastate
20 telecommunications traffic.

21 Thank you for the pro hac vice admission. I have
22 appeared before the Commission in paper hearings before. My
23 first exposure to the Commission in this practice was through a
24 fellow you may know named Jack Shreve. I was with the main
25 Public Advocates Office in the DC Office of People's Counsel

1 and attended many conferences and worked on issues with Jack
2 over the last several years. And I also came to know Julia
3 Johnson a little bit during that time. So I'm happy to be here
4 in person for the first time in some time.

5 This is a fairly straightforward breach of contract
6 case. While the issues may not be entirely simple, the dispute
7 is quite basic. We have two companies, who happen to be
8 regulated carriers, who disagree as to the interpretation of an
9 interconnection agreement approved by this Commission.

10 The types of charges that are issue, at issue are
11 threefold: Nonrecurring charges, also known as installation
12 charges; recurring charges, monthly rentals; and minute-of-use
13 charges. Now the parties have pretty much agreed that the
14 minute-of-use charge is not specifically in dispute in this
15 case. At the same time, it is still at issue in this case
16 because Sprint claims that that minute-of-use charge recovers
17 some relevant costs that we do not believe it does.

18 Fortunately there's been no accusations of
19 misfeasance or malfeasance between the companies. And
20 discovery, while vigorous, has been very responsible and
21 restrained, and I'd like to thank Sprint for that.

22 We've rendered, by the way, bills to another ILEC in
23 this state, namely BellSouth, for the same type of charges that
24 I listed. No dispute there, BellSouth has paid. So we think
25 we have a good interpretation of the contract here today.

1 The actual charges that we've plugged into our
2 methodology are derived from three different sources: Prices
3 included in the contract itself, that is an index or an
4 attachment to the contract; our price list, which has been on
5 file with this Commission for some time; and, importantly, the
6 liability that we face from third-party vendor facilities that
7 we use to transport Sprint's traffic.

8 Obviously, we believe that our interpretation of the
9 contract is correct and that we have provided the only record
10 evidence to justify the bills that we have sent and the payment
11 that we have demanded.

12 We look forward to presenting to you our case today
13 and answering any questions that you may have, questions that
14 I'm sure Sprint will have and questions that we anticipate the
15 Staff will have as well. I'm happy to answer any of your
16 questions at this time. Otherwise, that concludes our opening
17 remarks.

18 COMMISSIONER BAEZ: Thank you, Mr. Dodge. Ms.
19 Masterton.

20 MS. MASTERTON: Good morning, Commissioners. This
21 morning we're here to provide evidence to assist the Commission
22 in determining what is essentially a dispute concerning the
23 terms of the interconnection agreement between Sprint and ALEC.
24 And there are three important elements that you should consider
25 when hearing the evidence in this contract dispute.

1 First, the contract language in the Sprint/ALEC
2 interconnection agreement governs this dispute, and it states
3 that for transporting traffic from the point of interconnection
4 to ALEC's switch, Sprint will pay ALEC the lesser of three
5 options. ALEC's charges to Sprint do not comply with the
6 contract.

7 Second, under ALEC's bills Sprint would have to pay
8 ALEC multiple nonrecurring and recurring charges for the same
9 interconnection and transport facility. Again, ALEC's charges
10 do not comply with the contract.

11 And, third, ALEC's charges are so inflated that they
12 cannot reflect anything close to its TELRIC costs for providing
13 the interconnection facility. And, again, for any rates to
14 apply that are not Sprint's rates, FCC rules and the contract
15 require that the TELRIC methodology be followed.

16 ALEC has a lot to say about many things that are
17 unrelated to the agreement that governs the relationship
18 between the parties. They've discussed BellSouth's intrastate
19 access rates and what BellSouth bills ALEC and what ALEC bills
20 BellSouth. However, the agreement between ALEC and BellSouth
21 is not an issue in dispute in this docket.

22 They've also talked about ALEC's price list on file
23 with the Commission that is based on BellSouth's intrastate
24 access tariffs. But ALEC's price list is not a part of the
25 interconnection agreement between the parties and, thus, is not

1 applicable to this dispute.

2 You may even hear about Sprint's access tariffs and
3 what Sprint bills IXCs for transport services pursuant to its
4 access tariff. But, once again, Sprint's provisioning and
5 billing for access services is not a subject of this dispute.

6 This dispute involves arrangements between ALEC and
7 Sprint for interconnection and reciprocal compensation for
8 traffic that is subject to Section 251 of the Federal
9 Telecommunications Act and to the FCC rules implementing that
10 act. That traffic explicitly does not include access traffic.

11 The main point of dispute between the parties is the
12 nonrecurring rate that ALEC is billing Sprint to recover, or so
13 they allege, the cost of establishing the DS-0 trunks necessary
14 for ALEC to terminate Sprint-originated traffic in ALEC's
15 switch. The agreement between Sprint and ALEC does not contain
16 a nonrecurring charge for the establishment of these DS-0
17 trunks in the switch of the terminating carrier, and there is
18 no rate in the agreement because Sprint's cost structure
19 previously approved by this Commission in the context of
20 interconnection agreement arbitrations, Sprint's cost study
21 shows that that cost is recovered through the permitted
22 end-office switching rate.

23 ALEC, however, has unilaterally rewritten the
24 contract by saying that its tariff charges apply rather than
25 the rates in the contract, and that its charges of \$6,964 for

1 the 24 trunks within each DS-1 that are established for the
2 transport of the traffic, that this \$6,964 is necessary to
3 recover ALEC's costs for this activity. ALEC's costs, however,
4 have never been approved by this Commission, and such approval
5 is required by the agreement and by the FCC rules.

6 In addition to the DS-0 nonrecurring charge, ALEC
7 also billed Sprint nonrecurring charges for DS-1 facilities
8 from which the DS-0s are derived and for the DS-3 facilities
9 that the DS-1 facilities ride to be transported to ALEC's
10 switch.

11 ALEC bills these charges at its tariff rates even
12 though the agreement between the parties clearly sets forth the
13 applicable rates for these dedicated transport services.

14 In addition to using rates not included in the
15 agreement, ALEC is billing Sprint multiple charges for what are
16 ultimately the same transport facilities. And ALEC is also
17 double billing Sprint for the monthly recurring charges for the
18 facilities used to transport Sprint's traffic; that is, ALEC is
19 billing Sprint for the DS-3s that it leases from Time Warner
20 and uses to transport Sprint's traffic and is also billing
21 Sprint for each DS-1 that rides those DS-3 trunks.

22 Since Sprint delivers traffic to ALEC at the DS-1
23 level, it's Sprint's position that, under the terms of the
24 agreement, ALEC must bill at the rates in the agreement and
25 cannot bill for the same service twice.

1 In the course of this hearing Sprint will clearly
2 show that ALEC's bills to Sprint are not in accordance with the
3 agreement between the parties. In addition, Sprint will show
4 that, by its billing, ALEC is grossly overrecovering for the
5 costs associated with the dedicated transport services it
6 provides and that such overrecovery of costs violates both the
7 agreement and the FCC rules governing reciprocal compensation.

8 ALEC has also suggested another red herring to
9 attempt to enforce its clearly excessive and erroneous billing
10 on Sprint. ALEC has said that while it was made aware of
11 Sprint, that Sprint was disputing ALEC's bills for the
12 dedicated transport service within a reasonable time frame
13 after Sprint received the bills, ALEC is saying that Sprint has
14 forfeited its right to contest ALEC's improper and excessive
15 billing because it did not comply in every technical respect
16 with the dispute notification procedures in the agreement.

17 Sprint maintains that nothing in its conduct suggests
18 or supports that Sprint waived any of its rights to enforce the
19 provisions of the agreement and to ensure that it is billed and
20 paid the proper amount for reciprocal compensation under the
21 terms of the agreement, and we will, we will show that through
22 the evidence that we're presenting in the hearing this morning.

23 And that's all I have, Commissioners. Thank you for
24 your time.

25 COMMISSIONER BAEZ: Thank you, Ms. Masterton. Are

1 all the witnesses in the room? They are? Let's swear them all
2 in at once then. Would you please stand and raise your right
3 hand.

4 (Witnesses collectively sworn.)

5 COMMISSIONER BAEZ: Thank you.

6 Mr. Moyle, will you call your first witness or,
7 Mr. Dodge. I'm sorry.

8 MR. DODGE: Thank you, Your Honor. At this time ALEC
9 would call Richard McDaniel to the stand.

10 COMMISSIONER BAEZ: Mr. McDaniel.

11 DAVID RICHARD MCDANIEL

12 was called as a witness on behalf of ALEC, Incorporated, and,
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DODGE:

16 Q Good morning, Mr. McDaniel.

17 A Good morning.

18 Q Could you please state your full name for the record.

19 A My full name is David Richard McDaniel.

20 Q And are you the same Richard McDaniel who filed
21 direct, rebuttal and some corrected testimony in this
22 proceeding?

23 A Yes, I am.

24 Q And do you have those documents available to you?

25 A Yes.

1 Q If I asked you today the questions that were posed in
2 written form to you in your direct, rebuttal and corrected
3 testimony, would your answers be the same today?

4 A Yes, with the revisions that we have noted.

5 Q Do you have at this time any additional corrections,
6 additions or deletions to that testimony?

7 A No.

8 Q Would you provide the Commission a very brief summary
9 of your testimony and your view of the dispute in this matter?

10 A Yes, sir.

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1 **ALEC, INC.**

2 **DIRECT TESTIMONY OF D. RICHARD MCDANIEL**

3 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

4 **DOCKET NO. 020099-TP**

5 **MAY 22, 2002**

6 **Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH**
7 **ALEC, INC.**

8 **A. I am D. Richard McDaniel, and am currently employed by DURO**
9 **Communications Corp. ("Duro"), the parent company of ALEC, Inc.**
10 **("ALEC"), as Director of Carrier Relations. In that capacity, I am**
11 **responsible for negotiating ALEC's interconnection agreements and**
12 **managing ALEC's state-level regulatory and legislative obligations related**
13 **to these agreements in several states, including Florida, Georgia and North**
14 **Carolina. I am located at 1170 Buckhead Drive, Greensboro, GA 30642.**

15
16 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND**
17 **EXPERIENCE.**

18 **A. I have been director of carrier relations for Duro since June 2000. Prior to**
19 **joining DURO, I directed the consulting activities for CHR Solutions'**
20 **Client Services Group, Southeast Operations, in Atlanta, Georgia from**
21 **October 1997 through June 2000. From 1990 through 1997, I was a senior**
22 **regulatory, billing and engineering consultant for an engineering firm,**
23 **Engineering Associates. I earlier held various management positions at**

1 AT&T from September 1962 through December of 1989. I received a
2 Bachelor of Business Administration with a major in management from
3 Georgia State University in 1973 and a Masters of Business
4 Administration from Fairleigh Dickinson University in 1982.

5
6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. The purpose of this testimony is to address issues raised in this proceeding
9 relating to ALEC's providing of certain services and facilities to Sprint-
10 Florida, Inc. ("Sprint") and Sprint's failure to pay ALEC amounts owed
11 for such services and facilities.

12
13 **Q. PLEASE DESCRIBE THE NATURE OF THE ARRANGEMENT**
14 **BETWEEN THE PARTIES FOR TRANSPORT FACILITIES**
15 **PROVIDED BY ALEC TO SPRINT AND THE CHARGES AT**
16 **ISSUE.**

17 A. The Interconnection Agreement between Sprint and ALEC (the
18 "Agreement") sets forth the terms and conditions by which the Parties
19 interconnect their networks and exchange traffic. The traffic originated by
20 Sprint end users and terminated to ALEC's network has to date been so-
21 called "ISP-bound" traffic. Under the Agreement, both ALEC and Sprint
22 hand off such traffic to the other Party at an "established" point of
23 interconnection ("POI"). Under the Agreement, carriers are entitled to

Direct Testimony of D. Richard McDaniel

May 22, 2002

Docket No. 020099-TP

1 charge the originating carrier, first, a “termination” charge for the
2 switching of traffic at the terminating carrier’s end office and, second, a
3 “transport” charge for the delivery of that traffic from the interconnection
4 point to the terminating carrier’s end office switch that directly serves the
5 end-user. The dispute regarding Sprint’s payment to ALEC for this
6 minutes-of-use charge for termination of Sprint-originated traffic from
7 ALEC’s switch to ALEC’s end users has already been resolved through a
8 settlement agreement between the parties. A remaining reciprocal
9 compensation transport charge remains at issue between the Parties,
10 however. There are two elements to transport charges. First, ALEC, like
11 Sprint, charges the other carrier a one-time installation fee to ready ALEC
12 facilities for use by Sprint to transport that traffic. Second, ALEC assesses
13 a recurring, monthly charge for each circuit used to transport that traffic.
14 ALEC leases circuits from another telecommunications carrier (Time
15 Warner) and has dedicated capacity on these circuits for delivering Sprint
16 traffic from Sprint’s designated POIs to ALEC’s end office. Sprint,
17 however, has underpaid both recurring and nonrecurring transport charges
18 owed ALEC for the period of April 2001 through January 2002, forcing
19 ALEC to seek relief from the Commission.

20
21 **Q. WHAT IS THE CORRECT METHODOLOGY FOR**
22 **CALCULATION BY ALEC OF *RECURRING* DEDICATED**

1 **TRANSPORT CHARGES TO SPRINT FOR THE ORDERED**
 2 **FACILITIES?**

3 A. ALEC assesses Sprint a monthly unit charge for each DS1 and DS3
 4 facility ordered. To compute the total charge, the charge for each type of
 5 facility is multiplied by the number of facilities ordered for that month in
 6 each Sprint tandem and then the dollar amount totals for DS1s and DS3s
 7 for each month are added. In some cases, prorated partial month charges
 8 apply. The Agreement also governs the level of ALEC's transport
 9 charges. Section 2.2.3 of Attachment IV of the Agreement provides that if
 10 ALEC provides 100% of an interconnection facility via a lease from a
 11 third party, ALEC may charge Sprint for the proportionate amount of such
 12 facilities. The Agreement contains somewhat confusing cost options in
 13 such a circumstance. ALEC may charge the lesser of: "Sprint's
 14 dedicated interconnection rate; its own costs if filed and approved by a
 15 commission of appropriate jurisdiction; and the actual lease cost of the
 16 interconnection facility." Because ALEC has provided 100% of the
 17 interconnection facilities in dispute via lease of such facilities from a third
 18 party, and because all traffic exchanged to date has originated with Sprint,
 19 ALEC made a relatively simple calculation. ^{with respect to DS3 facilities,} ALEC billed Sprint the actual
 20 lease cost of the interconnecting facilities, reasoning that this was the least
 21 cost available to charge. ^{that would allow ALEC to recoup its costs of providing such facilities.}
 22 (The Agreement appears to grant ALEC the
 23 opportunity to add Sprint's dedicated rate or ALEC's tariffed rate to
 ALEC's actual lease cost, but ALEC chose to interpret the contract to

1 mean ALEC should charge Sprint only the actual lease cost incurred by
2 *With respect to DS3 facilities, ALEC billed Sprint at the agreement rate, an amount*
ALEC.) ~~The amounts billed were~~ listed in the Agreement at Attachment I,
3 Table One, Transport Bands, *because this rate was the least costly applicable rate.*

4 **Q. IS THAT IN FACT THE METHODOLOGY THAT WAS USED BY**
5 **ALEC TO CALCULATE THE AMOUNTS OWED FOR**
6 **RECURRING CHARGES RELATING TO FACILITIES**
7 **RENDERED TO SPRINT?**

8 A. Yes, by following the process just described, 14 invoices were derived that
9 accounted for recurring facilities dedicated to Sprint over the period at
10 issue in this dispute. The amounts ranged in amount from \$3,170.44 to
11 \$37,236.00 and a total of \$139,913.10 was invoiced for recurring charges
12 over that period.

13
14 **Q. IS SPRINT DISPUTING THAT METHODOLOGY?**

15 A. It is unclear if Sprint is disputing this methodology with respect to these
16 fourteen invoices. Aside from a brief e-mail remark to ALEC employee
17 Mr. Chris Roberson by a Sprint accounting officer stating that Sprint was
18 withholding payment of amounts charged that represented amounts for
19 DS3s due, there does not appear to be any dispute in the record with
20 respect to the manner in which recurring costs for these elements was
21 calculated. Further, Sprint's extremely sparse answer to ALEC's complaint
22 leave ALEC unable to determine whether Sprint is disputing this
23 methodology.

1

2

Q. DOES SPRINT OFFER AN ALTERNATE METHODOLOGY FOR THIS CALCULATION?

3

4

A. While I am not an accountant by training, Sprint does not appear to have done so.

5

6

7

Q. DID SPRINT PAY ANY OF THE AMOUNTS BILLED IN THESE INVOICES?

8

9

10

A. Yes, Sprint paid in full two of the DS1 invoices, MT200108-2 and MT2001109-2. In each case Sprint paid the entire \$5,252.35 billed. These bills corresponded to all the DS1 entrance facilities ordered for the months of August 2001 and September 2001. However, Sprint did not pay any amount of the total invoiced for the DS3 facilities for those months, MT200108-3 (\$9,309.00) and MT200109-3 (\$9,309.00). Sprint also did not pay any of the amounts invoiced for DS1 and DS3 facilities provided during the remainder of the period under consideration in this suit. In total, Sprint paid \$10,504.70 (the two DS1 invoices), but did not pay any portion of the other 12 invoices, which totaled \$129,408.38.

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Q. ONE OF THE BILLS FOR DS3S ALEC PROVIDED SPRINT, MT200107-18, WAS A BILL FOR DS3 ENTRANCE FACILITIES PROVIDED FOR THE MONTHS OF APRIL 2001, MAY 2001,

22

23

1 **JUNE 2001, AND JULY 2001. WHY DID ALEC BILL SPRINT FOR**
 2 **MULTIPLE MONTHS IN A SINGLE INVOICE AND IS THAT**
 3 **PERMITTED UNDER THE AGREEMENT?**

4 A. That bill represented the first bill ALEC sent Sprint for these facilities.
 5 Such backbilling is not uncommon throughout the industry. There is
 6 nothing in the language of the Agreement or industry practice that would
 7 prohibit it.

8

9 **Q. IN SUM, IS THERE ANY EXPLANATION FOR SPRINT'S**
 10 **REFUSAL TO PAY ALEC THE COMPLETE AMOUNTS**
 11 **INVOICED FOR RECURRING CHARGES?**

12 A. No. There is none.

13

14 **Q. WHAT IS THE CORRECT METHODOLOGY FOR ALEC TO**
 15 **CALCULATE THE *NONRECURRING* DEDICATED TRANSPORT**
 16 **CHARGES TO SPRINT FOR THE ORDERED FACILITIES?**

17 A. As previously indicated, ALEC assesses Sprint a one-time charge for
 18 installation of each facility. This charge includes a small access order fee
 19 for each order, ^{an installation fee for each DS3 circuit with a substantially higher price for the first} an installation fee for each ^{DS1} circuit (with a substantially
 20 ^{DS3 circuit),} higher price for the first ^{DS1} circuit), and a charge for each Feature Group
 21 D trunk ("FGD" or "DS0") installation (again, with a substantially higher
 22 price for the first FGD trunk). A separate installation charge is warranted
 23 for FGD trunks, as well as DS1 trunks, because separate identification and

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1 signaling continuity tests are required for each of the 24 FGD trunks
2 within each DS1 trunk. Also, each DS1 facility itself must be checked and
3 set up for the same framing and coding at each end. Billing for both
4 elements is not uncommon. ALEC, for example, charges another Florida
5 incumbent, BellSouth, for nonrecurring charges for both DS1s and DS0s
6 provisioned based upon ALEC's tariffed rates (which are identical to
7 BellSouth's own rates), and BellSouth has paid such charges.

8
9 To obtain the total amount owed for these charges, it is simply necessary
10 to add the access order charge, the first DS1 charge, the first FGD trunk
11 installation charge, the product of the number of additional DS1 circuits
12 multiplied by the lower additional DS1 price, then the product of the
13 number of additional FGD trunk installations multiplied by the lower
14 additional FGD trunk installation price.

15
16 Unlike the recurring charges discussed above, the Agreement does not
17 contain a separate provision governing DS0 charges in the reciprocal
18 compensation pricing section but does have a DS0 install charge in the
19 transport pricing section. ALEC therefore charged Sprint for each DS0
20 pursuant to ALEC's Florida price list. Specifically, the facility installation
21 charges contained in Florida Public Service Commission Tariff No. 2 --
22 Access, First Revised Page 3. Sections 3.2 ("High Capacity DS1") and
23 3.3 ("Signaling Connection") of ALEC's price list address both DS1 and

1 DS0 installation. This price list was filed with, and approved by, the
2 Commission (on January 14th, 2001 and January 15th, 2001).

3

4 **Q. IS THAT THE METHODOLOGY ALEC USED TO CALCULATE**
5 **THE AMOUNTS OWED FOR NONRECURRING CHARGES**
6 **RELATING TO THE INSTALLATION OF FACILITIES**
7 **PROVIDED TO SPRINT?**

8 A. Yes, ALEC billed Sprint for these facilities as they were ordered. The
9 invoices were sent out in five batches, July 11, 2001; July 12, 2001;
10 September 7, 2001; December 5, 2001; and January 4, 2002. Of the
11 \$869,332.27 billed for these installations, Sprint only paid ALEC
12 \$17,428.55, leaving a shortfall of \$851,903.72.

13

14 **Q. WHY IS SPRINT DISPUTING THAT METHODOLOGY?**

15 A. Sprint appears to claim that installation charges contained in the ALEC
16 price list cannot be invoked under the Agreement until the Commission
17 concludes an exhaustive cost proceeding concerning that price list. Sprint
18 appears to argue that the Agreement requires that ALEC apply the
19 Agreement's rates until such time as ALEC files forward looking cost
20 studies and establishes cost based rates that are approved by the
21 Commission and that are less than Sprint's rates. See Letter from Susan S.
22 Masterton, Sprint, to Clayton Lewis, Florida Public Service Commission
23 2-3 (December 7, 2001) (Exhibit G/DRM-1). Thus, apparently, Sprint

1 remitted to ALEC amounts based upon only the DS1 rates contained in the
2 Agreement, and refused to pay the billed DS0 charges. Even for the DS1
3 rates, however, Sprint has not provided ALEC with a clear explanation
4 regarding the source of any alternative rates for the cost items and how
5 they might be derived.

6
7 **Q. IS SPRINT'S METHODOLOGY INCORRECT?**

8 A. Yes, there is no requirement under the Agreement that ALEC's tariffed
9 rate for nonrecurring dedicated transport charges be established in a
10 formal Commission proceeding. Rather, the Agreement merely provides
11 that such rates must be "filed and approved by a commission of
12 appropriate jurisdiction." ALEC's rates were deemed approved by the
13 Commission and became effective prior to the charges at issue.

14
15 **Q. HAS ALEC CHARGED SPRINT AN ASYMMETRICAL RATE**
16 **FOR NONRECURRING TRANSPORT CHARGES?**

17 A. No. ALEC is unable to charge Sprint an exactly symmetrical rate because
18 an exactly applicable rate for DS0 installation is not supplied in the
19 Agreement. ALEC, however, has attempted to apply an equivalent rate.

20
21 In the Agreement, under Attachment One, Table One: Florida Price
22 Sheets, Page 44, no charge for DS0 installation is supplied under the
23 correct portion of the tariff for that charge, the section labeled "Reciprocal

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May 22, 2002
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1 Compensation.” Because an applicable DS0 charge was not supplied for
2 reciprocal compensation installation, ALEC instead elected another option
3 under the Agreement and billed Sprint at its installation prices listed in its
4 tariff. For FGD (DS0), this amounted to \$915.00 for the first line, and
5 \$263.00 for each additional line. For purposes of consistency, ALEC also
6 billed Sprint the ALEC-tariffed rate for DS1 installation, \$866.97 for the
7 first trunk installed, and \$486.83 for each additional trunk.

8
9 It should be noted that a nonrecurring charge for DS0 installation is
10 supplied on the preceding page of the Agreement, page 43, under the title
11 “Transport,” and amounts to \$153.58 per trunk. As discussed below,
12 however, Sprint appears to concede that neither this rate, nor the \$300 per
13 trunk charge in Sprint’s tariffed access rate for DS0 installation (see
14 Access Services Tariff, Sprint-Florida, Incorporated, page 138, E6.8.2(E)
15 (Exhibit H/DRM-2) represent the applicable charge for FGD trunk
16 installation for reciprocal compensation purposes.

17
18 Upon receiving word that Sprint would not pay either ALEC’s DS0 or
19 DS1 tariffed rates, ALEC suggested a compromise by offering to instead
20 agree to accept from Sprint installation charges based upon the
21 Agreement’s rate for DS1 installation and Sprint’s access tariff’s rate for
22 the DS0 installations (because Sprint alleged the DS0 transport installation
23 rate contained in the Agreement was not applicable). See E-mail from

1 Richard McDaniel, Duro, to Clayton Lewis, Florida Public Service
2 Commission, (December 14, 2001) (Exhibit I/DRM-3). ALEC later
3 offered to allow Sprint to make DS0 and DS1 payments based upon the
4 Agreement's DS1 and transport section DS0 charge (rates considerably
5 lower than ALEC's tariffed rates). See Letter from John C. Dodge,
6 counsel for ALEC, to Thomas A. Grimaldi, Sprint, offering settlement
7 (redacted) (Exhibit I/DRM-3). Sprint, however, rejected both offers.

8
9 Aside from what rate Sprint should pay for DS1 or DS0 installations it
10 orders, ALEC believes it is obvious that Sprint should pay *something* for
11 DS0 (FGD) installation. While the Agreement creates three options for
12 billing, and conditions payment based upon the "lesser" of these three
13 options, ALEC notes that "lesser" cannot mean "non-existent" when a
14 charge is commonly assessed. As I noted, installation of DS0 circuits
15 involves substantial additional time and expense beyond that required for
16 installation of DS1s. Where no applicable charge exists for a service
17 commonly rendered and compensated for, as is the case with the charge
18 for DS0s for reciprocal compensation purposes in the Agreement, ALEC
19 is entitled to avail itself of another option that does set forth an equivalent
20 charge, and cannot, as Sprint would have it, simply be forced to forgo an
21 applicable charge. Charging for DS0 installation is not a departure from
22 current practice among carriers in the state. ALEC currently exchanges
23 traffic with BellSouth, and BellSouth has billed ALEC for (and ALEC has

1 paid) transport installation charges for both DS1s *and* the DS0s that ride
2 on them based on BellSouth's tariffed charges. Similarly, BellSouth has
3 paid ALEC for both charges at ALEC's tariffed rates. *See* Exhibit
4 J/DRM-4 (sample invoice from ALEC to BellSouth). And as noted above,
5 Sprint's own Florida access tariff appears to provide for such charges.

6
7 **Q. ARE THE RATES CONTAINED WITHIN ALEC'S ACCESS**
8 **TARIFF FOR FACILITIES INSTALLATION REASONABLE?**

9 A. Yes. ALEC's tariff rates are based upon rates contained in BellSouth
10 Telecommunications, Inc.'s Florida Access Services Tariff. The tariff at
11 Second Revised Page 108 clearly includes "Nonrecurring charge[s]" for
12 "BellSouth SWA DS1 Service" at E6.8.1.A.2(a) and at Second Revised
13 Page 110 at E6.8.1.F.2(a) includes a "Per Trunk" "Nonrecurring Charge"
14 for "Trunk Side Service." *See* Exhibit K/DRM-5. The latter "trunk"
15 charge logically corresponds to a DS0 charge.

16
17 Sprint also complains that ALEC's tariffed installation rates have not been
18 determined through an approved cost study, yet they are based on another
19 incumbent carrier's approved rates that were based upon a cost study and
20 that were approved by the Commission.

21
22 **Q. DID ALEC BRING SPRINT'S ERRONEOUS METHODOLOGY**
23 **TO ITS ATTENTION?**

1 A. Yes. On October 23, October 24 and October 26, 2001, I sent Mitch
2 Danforth emails illustrating the errors in Sprint's methodology and
3 indicating that ALEC planned to file a complaint with the Commission
4 based upon Sprint's failure to pay amounts owed under the contract. See
5 Exhibit L/DRM-6.

6
7 **Q. UNDER THE TERMS OF THE AGREEMENT, WHAT MINUTE-**
8 **OF-USE CHARGES ARE APPLICABLE FOR THE TRANSPORT**
9 **OF SPRINT-ORIGINATED TRAFFIC FROM SPRINT'S POIS TO**
10 **ALEC'S SWITCH?**

11 A. Sprint and ALEC decided to further consider this issue during their
12 prehearing conference call establishing the issues for the Commission's
13 consideration in this matter. After further reviewing the Agreement, it
14 does not appear that any minute-of-use charges apply to the transport of
15 Sprint-originated traffic from the POIs to ALEC's switch. This issue
16 appears to be a carryover from the termination component of the
17 compensation Sprint owed ALEC, which was, as explained above,
18 resolved through a settlement agreement between the Parties.

19
20 **Q. WHAT WERE THE APPROPRIATE CHARGES FOR**
21 **TRANSPORT FACILITIES AND SERVICES PROVIDED BY**
22 **ALEC TO SPRINT AND HOW WERE THEY CALCULATED?**

1 A. I understand this question reflects the list of identified issues adopted by
2 the Parties. I have described these charges, Sprint's failure to apply them,
3 and Sprint's faulty reasoning for not doing so above in my description of
4 the methodology by which ALEC's invoices were generated.

5

6 **Q. EVEN IF SPRINT'S CONTENTIONS REGARDING THE PROPER**
7 **METHODOLOGY AND RATES FOR CALCULATION OF THE**
8 **RECURRING AND NONRECURRING ARE CORRECT, ARE THE**
9 **AMOUNTS PAID BY SPRINT STILL BELOW WHAT SPRINT**
10 **SHOULD PAY UNDER ITS OWN METHODOLOGY AND RATES?**

11 A. Yes, as noted above, Sprint has failed entirely to pay any recurring and
12 nonrecurring charges during certain months. As explained below, the
13 Parties are required to promptly pay all undisputed amounts. Even if
14 Sprint wished to dispute ALEC's methodology and rates, withholding
15 undisputed amounts due is clearly improper.

16

17 **Q. DID SPRINT AND ALEC AGREE ON PROCEDURES FOR**
18 **CHALLENGING AMOUNTS BILLED?**

19 A. Yes, the Agreement provides for a manner of disputing bills at Part B,
20 Section 21. However, the Agreement's relevant provisions also require
21 that the Parties promptly pay all undisputed amounts. Sections 5.3 and
22 21.2 of Part B of the Agreement require Parties to pay all invoices on the
23 due date, and to pay all undisputed amounts when formally disputing any

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1 charges from the other Party. The Agreement also clarifies the means by
2 which either Party may dispute a charge. Section 5.4 provides that a
3 written, itemized dispute or claim must be filed with the other Party in
4 order for the nonpaying Party to avoid continuing liability for a particular
5 charge, and the Agreement implies such notice must be provided within 30
6 days of receipt of an invoice.

7

8 Q. DID SPRINT PROPERLY FOLLOW THESE PROCEDURES?

9 A. No. For certain of the unpaid invoices in dispute, Sprint provided untimely
10 comments that it would dispute certain charges, but Sprint's
11 communications were inconsistent and confusing. For example, Sprint
12 sent a "Dispute Claim Notification" for the 6/12/01-11/05/01 Invoice
13 Dates (billed to Sprint in December 2001 and responded to by Sprint on
14 January 4, 2002) disputing *termination* fees already paid to ALEC. Each
15 of the two notices Sprint sent ALEC on January, 4 2002 regarding
16 termination fees were clearly identified as a "Dispute Claim Notification"
17 and provided some rationale for the dispute. With respect to ALEC
18 invoices regarding *recurring* transport facilities charges (the first was
19 billed to Sprint in July 11, 2001 and responded to by Sprint on August 20,
20 2001), no such "Dispute Claim Notification" was provided. Instead, on
21 August 20, 2001 Sprint's Alison R. Stickel sent ALEC's Chris Roberson
22 an email indicating: "As for Metrolink. [sic] I have validated all the DS1's
23 against the ASR's. We are issuing payment on the monthly recurring

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1 charges on all except the DS3. I still need to validate that. I am disputing
2 the invoices for installation charges because these rates should come from
3 the interconnection agreement.” Thus, as for that particular invoice,
4 Sprint appears to have accepted *all* DS1 recurring charges, DS3 *recurring*
5 charges (upon confirmation), and to have disputed the rate (but not the
6 obligation for) DS1 and DS0 *nonrecurring* charges. On September 6,
7 2001, Ms. Stickel’s second e-mail to me provided a spreadsheet indicating
8 that DS0 installation charges would not be paid but failed to explain the
9 rationale for not making such payments.

10
11 On October 23, 2001, months after the initial invoices were sent, Mitch
12 Danforth sent me an e-mail indicating that “Since Sprint does not bill a
13 DS0 install rate neither can the CLEC. Sprint does not believe that the
14 DS0 install charges are valid, or that the install charges on the DS1’s
15 above the contract rate are valid. We will continue authorize payment
16 based on the contract language and rates.” This “explanation” was not
17 associated with any particular invoice. For other invoices, Sprint’s
18 rationale for the dispute was cursory.

19
20 **Q. IN SOME INSTANCES, SPRINT INDICATED THAT IT**
21 **INTENDED TO INVESTIGATE THE PAYMENT OF CHARGES**
22 **FURTHER. DID ALEC AGREE TO WAIVE THE TIME FRAME**
23 **AND REQUIREMENTS FOR DISPUTING CLAIMS?**

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1 A. No, ALEC did not. Rather, in the October 24, 2001 e-mail from me to
2 Mitchell Danforth of Sprint, I noted that ALEC had no other option but to
3 file an informal complaint with the Commission precisely because “you
4 have not officially put this billing in a billing dispute situation.”

5

6 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

7 A. Yes, it does.

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ALEC, INC.

**REBUTTAL TESTIMONY OF D. RICHARD MCDANIEL
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 020099-TP

JUNE 28, 2002

**Q. PLEASE STATE YOUR NAME, ADDRESS, AND POSITION WITH
ALEC, INC.**

A. I am D. Richard McDaniel, and am currently employed by DURO Communications Corp. (“Duro”), the parent company of ALEC, Inc. (“ALEC”), as Director of Carrier Relations. In that capacity, I am responsible for negotiating ALEC’s interconnection agreements and managing ALEC’s state-level regulatory and legislative obligations related to these agreements in several states, including Florida, Georgia and North Carolina. I am located at 1170 Buckhead Drive, Greensboro, GA 30642.

**Q. ARE YOU THE SAME D. RICHARD MCDANIEL THAT FILED
DIRECT TESTIMONY EARLIER IN THIS PROCEEDING?**

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to rebut the testimony of Mr. Jeffrey P. Caswell, representing Sprint-Florida, Inc.

1

2 **Q. WOULD YOU PLEASE SUMMARIZE YOUR RESPONSE TO THE**
3 **TESTIMONY OF MR. CASWELL?**

4 A. Mr. Caswell's testimony attempts to assail the reasonableness of ALEC's
5 billing of Sprint for transport facilities by alleging that the assessed
6 charges were duplicative, based on the incorrect rates, and improperly
7 included charges for the transport of non-local traffic. However, ALEC's
8 rebuttal testimony will establish that the assessed charges were not
9 duplicative, were based on reasonable rates pursuant to the contract
10 between the Parties and under FCC law and included charges only for
11 local traffic. Moreover, Mr. Caswell fails to offer any reasonable defense
12 of Sprint's failure to properly dispute charges properly assessed by ALEC.

13 **Q. DO YOU WISH TO COMMENT ON MR. CASWELL'S**
14 **ASSERTIONS REGARDING FLORIDA PUBLIC SERVICE**
15 **COMMISSION JURISDICTION OVER THIS MATTER (ISSUE 1).**

16 A. Mr. Caswell indicated that Sprint intends to address this matter in Sprint's
17 post-hearing brief. ALEC will therefore not discuss this issue in my
18 rebuttal testimony, but reserves the right to address the issue at a later
19 date.

20 **Q. DOES MR. CASWELL PROPERLY DESCRIBE THE**
21 **APPROPRIATE COMPENSATION FOR LOCAL TRAFFIC**
22 **WHEN SPRINT DELIVERS TRAFFIC TO ALEC?**

1 A. Mr. Caswell on pages 5 and 6 correctly indicates that Section 2.2.3 of
2 Attachment IV of Part B of the June 1, 2001 Interconnection Agreement
3 between Sprint and ALEC (the “Agreement”) governs Sprint’s financial
4 obligations for transport of Sprint-originated traffic from the point of
5 interconnection (POI) to ALEC’s end office. That Section provides that
6 for such transport ALEC may charge the lesser of: “Sprint’s dedicated
7 interconnection rate; its own costs if filed and approved by a commission
8 of appropriate jurisdiction; and the actual lease cost of the interconnection
9 facility.” However, other sections of the Agreement are also applicable to
10 compensation for transport. The Agreement’s General Terms and
11 Conditions also notes that “should there be a conflict between the terms
12 of this agreement and any such tariffs and practices, the terms of the tariff
13 shall control.” Interconnection Agreement, Part B, Section 1.4. Section
14 3.1 of Attachment 1, Part B, further provides that: ‘The rates to be charged
15 for the exchange of Local Traffic are set forth in Table 1 of this
16 Attachment and shall be applied consistent with the provisions of
17 Attachment IV of this Agreement.’”

18 **Q. DOES MR. CASWELL CORRECTLY STATE THE**
19 **METHODOLOGY FOR ASSESSING INSTALLATION FEES FOR**
20 **TRANSPORT FACILITIES?**

21 No. As Mr. Caswell notes on page 6, the largest portion of the disputed
22 amounts involve counting applicable non-recurring charges for facility
23 installations. ALEC charges Sprint an installation fee for each DS3

1 circuit, for each DS1 facility that rides on that DS3 circuit, and for each
2 DS0 contained within the DS1. Mr. Caswell asserts on page 7 that such
3 charges represent “multiple installation charges and a service order charge
4 for the same facility.”

5
6 But as ALEC has noted in its direct testimony, a separate installation
7 charge is warranted for FGD trunks, as well as DS1 trunks, because
8 separate identification and signaling continuity tests are required for each
9 of the 24 FGD trunks within each DS1 trunk. Also, each DS1 facility
10 itself must be checked and set up for the same framing and coding at each
11 end. ALEC has noted that each DS0 within a DS1 contains a separate
12 Identification used by Signaling System 7 (SS7). This identification must
13 be the same for both carriers or SS7 could not establish signaling for that
14 particular trunk within the DS1 carrier. This identification is known as the
15 Trunk Circuit Identification Code (TCIC). After the TCIC test, if the
16 identification checks out, then the continuity through the switch is tested
17 by sending tone at a certain level and checking that the tone is returned at
18 the proper level. These tests thus involve two distinct processes for each
19 trunk, a factor that increases costs. Moreover, there are clearly not for
20 “the same facility.”

21
22 Billing for all Digital Signal components of service provided is not
23 uncommon. ALEC, for example, charges another Florida incumbent,

1 BellSouth, for non-recurring charges for both DS1s and DS0s provisioned
2 based upon ALEC's tariffed rates (which are identical to BellSouth's own
3 rates), and BellSouth has paid such charges. Please see Exhibit 1.
4 Metrolink invoice MI200107-1 describes the simultaneous charges for
5 DS1 and FGD (DS0) installation. The corresponding entry for
6 MI200107-1 in parentheses in the accompanying spreadsheet indicates
7 that such amounts were fully paid by BellSouth.
8

9 **Q. IS MR. CASWELL CORRECT IN ASSERTING THERE IS NO**
10 **JUSTIFICATION FOR BILLING FOR RECURRING TRANSPORT**
11 **OR ENTRANCE FACILITIES FOR BOTH DS1 AND DS3**
12 **FACILITIES BETWEEN SPRINT'S WINTER PARK ACCESS**
13 **TANDEM AND ALEC'S SWITCH IN MAITLAND?**

14 A. No. Mr. Caswell asserts on pages 7 and 8 that Sprint's responsibility for
15 delivering traffic to ALEC between the POI and ALEC's switch is at the
16 DS1 level, and that while "ALEC is entitled to carry its traffic at
17 something other than the DS1 level . . .this is not under the control of
18 Sprint and Sprint should not be subject to multiple billings for the same
19 service." This ignores, however, that both facilities are used to provide
20 the service. This is not, as Mr. Caswell contends, "billing twice for the
21 same service." Rather, it is seeking recompense for all expenses involved
22 in the provisioning of that single transport service. Mr. Caswell's
23 description of the proper manner of assessment for non-recurring charges

1 for installation of interconnection facilities on page 8 repeats this
2 erroneous mischaracterization.

3
4 To elaborate, Mr. Caswell is correct in stating that Sprint delivers Sprint-
5 originated traffic to the applicable Sprint access tandem building. In order
6 to accommodate this Sprint-originated traffic, ALEC at that point must
7 lease facilities to transport Sprint's traffic from Sprint's tandem to the
8 ALEC switch. ALEC has to pay a vendor to obtain the capacity to
9 transport Sprint's traffic to terminate on the ALEC switch. The Agreement
10 allows ALEC to charge Sprint for the transport. If Sprint had provided the
11 transport, then ALEC would have only charged the associated DS1s
12 utilizing that facility as well as the installation charges associated with the
13 DS1s and DS0s, rather than also paying for the DS3 facility.

14
15 As with non-recurring charges, ALEC is merely following procedures it
16 follows with another ILEC, BellSouth, in the state. Please see Exhibit 2.
17 Metrolink invoice MT200106 describes the simultaneous charges for DS3
18 and DS1 transport. The corresponding entry for MT200106 in
19 parentheses in the accompanying spreadsheet indicates that such amounts
20 were fully paid by BellSouth.

21

22 **Q. IS MR. CASWELL'S DESCRIPTION OF THE RATE FOR**
23 **CALCULATION OF APPROPRIATE RECURRING AND NON-**

1 **RECURRING DEDICATED TRANSPORT CHARGES TO SPRINT**
 2 **ON PAGES 9 AND 10 CORRECT?**

3 No. Mr. Caswell's testimony notes that Section 3.1 of Attachment 1
 4 provides "The rates to be charged for the exchange of Local Traffic are set
 5 forth in Table 1 of this Attachment and *shall be applied consistent with the*
 6 *provisions of Attachment IV of this Agreement.*" (emphasis supplied). Mr.
 7 Caswell suggests that this means that "ALEC's price list rates, which are
 8 not found in the Agreement, do not apply." However, this is clearly at
 9 odds with the immediately preceding sentence, which states that "Sprint's
 10 rates for dedicated transport should apply because they are less than the
 11 rates billed by ALEC," as provided under Attachment IV, Section 2.2.3.
 12 Clearly, Sprint does not believe Section 2.2.3's choice is obviated by the
 13 quoted language of Section 3.1. Rather, a modification of Table 1 by the
 14 terms of Attachment IV is the better interpretation because it renders no
 15 portion of the contract superfluous. As described below, ALEC billed
 16 Sprint at the Time Warner lease rate for ^{DS3} recurring costs, ^{the agreement rate for DS1 recurring costs,} and at its price list
 17 rate for non-recurring costs.

18
 19 **Q. MR. CASWELL SUGGESTS THAT THE FEDERAL**
 20 **COMMUNICATIONS COMMISSION'S RULES REGARDING**
 21 **RECIPROCAL COMPENSATION BAR ALEC FROM USING ^{PRICE} THE**
 22 **^{LIST} LEASE RATES. IS THAT SO?**

1 A. No. While the FCC's rules call for reciprocal rates for transport and
 2 termination of traffic to be symmetrical and based upon the ILEC rate, and
 3 for reciprocal rates to be based upon the ILEC rate, ALEC has merely
 4 followed the rate that Sprint itself has established. As ALEC noted in its
 5 Complaint, the Agreement is a Sprint-drafted document. Sprint drafted
 6 language with the cost-recovery options contained in Section 2.2.3 of
 7 Attachment IV. Sprint itself has recognized this in its testimony by
 8 suggesting that ALEC may select from the lower of these rates. ALEC did
 9 not attempt to alter the ILEC rate. Rather, it elected to choose from the
 10 rates provided by the ILEC in its Agreement.

11
 12 ALEC has assessed Sprint recurring transport ^{for DS3 facilities} charges pursuant to the rates
 13 at which Time Warner leases those facilities to ALEC because neither the
 14 Agreement rates nor ALEC's price list rate would allow ALEC to recoup
 15 the cost of those facilities to ALEC. ALEC is merely passing through the
 16 costs of the Time Warner arrangement to Sprint. Despite the language of
 17 Section 2.2.3, the Parties must exchange reciprocal compensation traffic
 18 under the Agreement and a rate that would not allow ALEC to recoup
 19 ongoing costs necessitated by calls originated by the other Party would be
 20 manifestly unconscionable. *ALEC believes Sprint does not dispute that*
 21 *the agreement's DS1 rate is the proper rate for applicable recurring DS1*
 22 *charges Sprint owes ALEC.*

22 With respect to non-recurring charges, ALEC is unable to use the
 23 Agreement for rates because the Agreement contains no rate for DS0

1 charges. The lease rate of Time Warner is inapplicable because the
2 contract between Time Warner and ALEC by which ALEC obtains
3 capacity contains no DS0 rate. The Agreement's General Terms and
4 Conditions provides that "should there be a conflict between the terms of
5 this agreement and any such tariffs and practices, the terms of the tariff
6 shall control." Agreement, Part B, Section 1.4. ALEC interprets the lack
7 of a key rate, the DS0 rate, to be a conflict that causes the ALEC's price
8 list rate to control. This leaves the price list rate as the correct rate.

9
10 ALEC has in good faith attempted to resolve disagreement over the rates
11 to be assessed by offering to pay Sprint at the applicable rates contained in
12 the Agreement. Because Sprint rejected this offer (contending that no
13 amounts were due at any rate), ALEC's election should be give particular
14 deference.

15 **Q. DID ALEC IMPROPERLY CHARGE SPRINT RECIPROCAL**
16 **COMPENSATION FEES FOR INTERLATA TRAFFIC?**

17 A. No. Mr. Caswell on page 4 states that "Sprint is not responsible for
18 interLATA transport, therefore transport charges are only applicable to the
19 Winter Park to Maitland route. However, ALEC has billed Sprint
20 recurring and non-recurring charges for interLATA transport between
21 Tallahassee and its [ALEC's] switch in Valdosta, Georgia, and between
22 the Ocala access tandem in the Gainesville LATA and its switch in
23 Maitland (in the Orlando LATA)."

1
2 ALEC, however, has not improperly billed Sprint for the traffic Mr.
3 Caswell describes. The Agreement defines “Local Traffic” as “traffic
4 (excluding CMRS traffic) that is originated and terminated within Sprint’s
5 local calling area, or mandatory expanded area [sic] service (EAS) area, as
6 defined by State commissions or, if not defined by State commissions,
7 then as defined in existing Sprint tariffs.” Agreement, Part A, § 1.63. The
8 traffic Sprint describes originates and terminates within the applicable
9 local calling area because ALEC only bills Sprint for the local
10 channel/entrance facility/loop from the tandem to the Point of
11 Interconnection (POI). ALEC pays another vender to transport the traffic
12 to ALEC’s switches in Valdosta and Maitland for the Ocala and
13 Gainesville LATAs, respectively. ALEC is not required to have a switch
14 in every LATA or every rate center. Instead, ALEC orders NPA/NXX
15 codes for each of the rate centers our customers need. ALEC obtains from
16 Telcordia a POI CLLI for each LATA where the ILEC hands off LATA
17 traffic to ALEC at this point. The calls to ALEC’s NPA/NXX are
18 therefore Local Calls and not interLATA calls.

19
20 **Q. DO YOU AGREE WITH MR. CASWELL’S STATEMENT ON**
21 **PAGE 11 THAT PER MINUTE OF USE CHARGES SHOULD NOT**
22 **BE ASSESSED UPON SPRINT FOR THE TRANSPORT**
23 **SERVICES ALEC HAS RENDERED TO SPRINT (ISSUE 3)?**

1 A. Yes. Per minute charges do not apply to the leased dedicated facilities
2 ALEC has provided to Sprint and ALEC has not assessed Sprint such
3 charges.

4 **Q. HAS SPRINT PAID ALEC APPROPRIATE CHARGES**
5 **PURSUANT TO THE TERMS OF THE AGREEMENT?**

6 No, Sprint has underpaid bills Sprint was properly assessed for transport
7 services it received from ALEC. Mr. Caswell on page 12 concedes that
8 until very recently, Sprint had paid ALEC only \$45,389.50 of
9 \$1,009,245.35 it had been assessed for transport services rendered during
10 the period described in the complaint. These amounts paid represent less
11 than five percent of the amount billed. Mr. Caswell also refers to a
12 subsequent payment on May 22, 2002 of \$78,601.38. Of the total
13 \$123,990.88 Sprint has paid ALEC, it appears that Sprint has paid for a
14 major portion of the recurring costs for the DS1s, but not for the DS3s.
15 Similarly, a portion of the DS1 installs has been paid at the Agreement
16 rate not at the tariff rate, but no DS⁰_{or DS3} installs have been paid. It appears
17 that the most recent payment does not apply exclusively to the period in
18 dispute.

19
20 Prior to the May 22, 2002 payment, the last transport facility payment was
21 made in August, 2001. Even though Sprint was only disputing the DS3
22 and non-recurring charges, Sprint did not pay any recurring or non-
23 recurring transport charges from late August 2001 to late May 2002. The

1 Agreement requires the payment within 30 days of any undisputed
2 amounts. Sprint has violated the Agreement in this manner and has not
3 paid late charges.

4 **Q. DID SPRINT WAIVE ITS RIGHT TO DISPUTE TRANSPORT**
5 **CHARGES BECAUSE IT DID NOT PROPERLY FOLLOW**
6 **PROCEDURES OUTLINED IN THE PARTIES'**
7 **INTERCONNECTION AGREEMENT?**

8 A. Yes. As described in ALEC's Direct Testimony, the Agreement contains
9 detailed provisions requiring formal written notice of intent to dispute
10 claims within 30 days and provides that such amounts become due and
11 payable if they are not properly disputed. Mr. Caswell's testimony wholly
12 fails to dispute ALEC's contention that Sprint waived its right under the
13 Agreement to dispute assessed charges by repeatedly failing to follow
14 applicable notification procedures. Mr. Caswell indicates that ALEC
15 received invoices for circuits that are at issue in this proceeding on July
16 18, 2001. The first notice of any kind ALEC received was on August 20,
17 2001, after the 30-day deadline had expired, and even this notice was a
18 cursory email that was not the required written notice and that failed to
19 provide basic crucial details, such as the basis for the dispute of the DS3
20 recurring charges. Mr. Caswell does not dispute ALEC's assertion that
21 this notice was wholly insufficient. Mr. Caswell also is unable to cite
22 specific dates or documents whereby notice of intent to dispute subsequent
23 notices were provided. He cannot because subsequent invoices were not

1 disputed at all. Each invoice triggered a dispute notification window and
2 Sprint provides no evidence suggesting that such windows were met.
3 Rather, for the majority of periods described in the complaint, *no* recurring
4 transport charges were paid to ALEC, even though *some* amounts were
5 clearly due.

6
7 Because Sprint failed to properly dispute notices, these amounts became
8 due and payable. Furthermore, Sprint waived its right to dispute the
9 manner of calculation and aggregate amount assessed. Sprint should be
10 held to the full amounts billed; any other result would essentially reward
11 Sprint for making ALEC chase it for payment. ALEC also notes that
12 Sprint has of late begun providing former written dispute claim notices
13 (*see*, for example, Exhibit 3, Dispute Claim Notifications of June 4, 2002
14 as well as Exhibit E to the Complaint, Sprint Dispute Claim Notification
15 for the 6/12/01-11/05/01 Invoice Dates (Jan. 4, 2002)). Such belated
16 adherence to formal notification procedures only underscores Sprint's
17 failure to provide proper and timely billing dispute notification for earlier
18 periods and Sprint's recognition of that fact. Now that it sees that ALEC
19 will not be dissuaded from pursuing its rights under the Agreement, Sprint
20 belatedly seeks to comply with the Agreement's dispute notification
21 procedures.

22 **Q. ARE THERE ANY OTHER INACCURACIES IN MR. CASWELL'S**
23 **TESTIMONY?**

1 A. Yes. On page 13, Mr. Caswell states, “Discussions [regarding billing
2 disputes] ended in December 2001 as a result of ALEC’s filing of an
3 informal complaint with the Florida PSC.” This is inaccurate. Rather,
4 after December 2001, ALEC continued dialogue with Mr. John Clayton of
5 Sprint, who verbally indicated that Sprint was interested in resolving the
6 dispute and that he might be willing to come to Florida to meet with
7 ALEC executives to discuss the issues. However, in January, Sprint sent a
8 dispute of all charges, facilities and usage, and requested that ALEC
9 refund all monies for termination fees already paid by Sprint for the period
10 at issue. Thereafter, legal counsel exchanged correspondence outlining
11 each Party’s interpretation of the contract. Finally, Mr. Clayton contacted
12 ALEC to determine if ALEC was willing to settle the termination portion
13 of the disputed charges and ALEC and Sprint settled all termination
14 amounts.

15 **Q. PLEASE SUMMARIZE YOUR TESTIMONY**

16 A. Mr. Caswell’s testimony is incorrect. ALEC properly assessed Sprint
17 recurring and non-recurring charges related to multiple circuits within
18 each dedicated transport facility, billed Sprint for dedicated transport at
19 proper rates, and did not improperly bill Sprint for InterLATA traffic.
20 Most notably, however, Mr. Caswell has failed to rebut ALEC’s
21 contention that Sprint wholly failed to properly dispute the amounts billed.
22 Sprint has waived its right to dispute these charges and, upon a showing
23 by ALEC that such bills were assessed pursuant to the Agreement, as

1 ALEC's Direct and Rebuttal Testimony have provided, the Commission
2 should require Sprint to pay ALEC the outstanding billed amount in full.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 A. Yes.

5

6

7

8

1 COMMISSIONER BAEZ: Mr. Dodge, can we, can we mark
2 his exhibits now since you've taken both --

3 MR. DODGE: Certainly, Your Honor.

4 COMMISSIONER BAEZ: And I have a question for Staff.
5 Is there, is there any difficulty in taking, in taking both
6 rebuttal and direct exhibits as a composite?

7 MS. DODSON: I don't have a problem with that.

8 COMMISSIONER BAEZ: Any, Ms. Masterton?

9 MS. MASTERTON: No, I don't have a problem.

10 COMMISSIONER BAEZ: Okay. Go ahead, Mr. Dodge.

11 MR. DODGE: At this time, if my recollection of where
12 we are in the numbering is correct, ALEC would offer the
13 direct, rebuttal and one page of corrected testimony of Richard
14 McDaniel as Composite Exhibit 8.

15 COMMISSIONER BAEZ: Well --

16 MR. DODGE: Or should we mark them separately?

17 COMMISSIONER BAEZ: His exhibits DRM-1 through DRM-6
18 and rebuttal exhibits DRM-1 through -- I think it's DRM-5; is
19 that correct? You've only got one rebuttal exhibit,
20 Mr. McDaniel? No. DRM-2.

21 So direct, direct exhibits DRM-1 through DRM-5 and
22 rebuttal exhibits DRM-1 through, and DRM-2 of Mr. McDaniel will
23 be marked as Composite Exhibit 8 for identification.

24 (Exhibit 8 marked for identification.)

25 COMMISSIONER BAEZ: Okay, Mr. Dodge.

1 MR. DODGE: Thank you, Your Honor.

2 BY MR. DODGE:

3 Q Mr. McDaniel, I had asked you to provide a brief
4 summary of your testimony in your view of the dispute in this
5 matter.

6 A Thank you, and good morning.

7 The main dispute between ALEC and Sprint, as
8 Ms. Masterton has stated, involves the charges that we have
9 billed to, to ALEC, I mean, to Sprint. And probably a little
10 history, if you don't mind, on Duro, how we came about, would,
11 would maybe help understand what we do.

12 Duro Communications formed several, came together and
13 formed several companies, they acquired several ISPs. Many of
14 the ISPs had ALEC certificates that they acquired. And so we
15 have gone through a process of trying to consolidate a lot of
16 this, and in so doing we worked with both BellSouth and Sprint
17 to consolidate our customers, the ISPs, into a more economical
18 way of handling traffic.

19 And the original agreement that -- well, let me start
20 in Florida with the ALEC that we acquired there. It was
21 Metrolink Internet Services of Port St. Lucie, who was
22 certified in Florida but had no interconnection agreement at
23 the time. And so we opted into, prior to my joining Duro
24 Communications, opted into the NorthPoint/Sprint agreement.
25 And that is the one that is still the interconnection agreement

1 that we're using, even though later on when it expired, Sprint
2 did agree to change the name from NorthPoint to ALEC and we
3 added a change of our portion in there. So we're using the
4 same contract that Sprint and NorthPoint had been using in
5 their dealings, and what, what we do is very similar to what
6 NorthPoint does. And when we met with Sprint to set up our
7 network, we explained how we wanted to interconnect, Sprint
8 basically agreed, we had some discussion and then we came to an
9 agreement as to how we would do that.

10 And the contract, in my terms, calls for two types of
11 interconnections, of compensation, excuse me, two
12 compensations. There is an interconnect compensation and there
13 is a call termination compensation. And I think that is kind
14 of the heart of where we're going.

15 Sprint asked us -- our switch is in Maitland,
16 Florida. Their tandem is in Winter Park. So we had to
17 interconnect those two offices with facilities. According to
18 the interconnect agreement, we could provide that facility
19 ourselves, you know, and be compensated for doing so. And we
20 did that with Time Warner, as indicated in the testimony.

21 We have done similar things, as everyone has said,
22 with BellSouth, similar operations with BellSouth at the
23 Colonial tandem down to our Maitland switch. Again, we lease
24 facilities from Time Warner and BellSouth pays us for, for that
25 compensation just as we have billed Sprint.

1 The charges basically -- and I look at the, the
2 interconnection facility as the pipe, or the DS-3 as mainly a
3 BIT stream that carries a lot of traffic across there. With
4 the DS-3 that we obtained from Time Warner, it's not very good
5 unless you do some other things to that, to that facility.

6 But we, after meeting with Sprint and setting up the
7 network, we found we needed additional equipment, multiplexing,
8 so we ordered that. And that's kind of when the billing
9 problem became involved with Time Warner.

10 We set up the network and did that, started turning
11 up traffic in the April time frame and went through -- later on
12 this year we, we turn up various pieces as we can and we have
13 billed Sprint as we did that.

14 We -- when we billed Sprint the first time in April,
15 we, April of 2000, excuse me, July of 2000, it went back to
16 April, we did not hear back from Sprint and we called them and
17 they said they were, you know, they were going to pay the DS-1s
18 but they were trying to validate the DS-3. That was basically
19 the conversation that was, that occurred. And so it's been
20 kind of ongoing that way.

21 Later Sprint did pay for some of the DS-1s, but then
22 they stopped paying again and didn't pay anymore until the
23 May 2002 time frame.

24 So it's -- the transport -- to me, there is an
25 interconnection compensation, which is the DS-3s. And to get

1 from their tandem to our switch, there's basically three pieces
2 of facility, and I'll go into those details later on, but, and
3 we pay Time Warner to do that.

4 Then the contract also calls for compensation for
5 call transport and termination. That is the trunks that ride
6 on that DS-3, as Ms. Masterton has indicated. There's work
7 involved in installing DS-1s. You have to make sure the
8 framing is correct, there's cross-connects that have to be
9 done, various things. There's acceptance tests that we have to
10 do, and we do some intercompany type thing to make sure that
11 our end is tested and ready to go before we actually get with
12 either Sprint or Time Warner, depending on who we're
13 interconnecting with at that point, to make sure that our end
14 is cross-connected properly and tested properly.

15 And the same thing on a DS-0. The DS-0 is that time
16 slot with an additional signal, 64 kilohertz, and that is where
17 the voice traffic rides. And each of those with the signaling
18 that we use takes a particular type of test that you need to do
19 to make sure that the call will go through and be set up
20 properly. And so we feel that, in our billing that we're
21 being, you know, we need to be compensated for that work that
22 we do.

23 We have offered in a couple of cases trying to settle
24 this to either use the Sprint tariff rate, to use another rate
25 for DS-0s that's in the contract or most anything, but we have

1 been unable to reach that settlement with Sprint. And we feel
2 that what we're doing is justified. We need to be compensated
3 for the work that we do.

4 Q Thank you, Mr. McDaniel. Anything else?

5 A No.

6 MR. DODGE: At the Commission's direction, would it
7 be appropriate at this time to move into evidence
8 Mr. McDaniel's prefiled testimony as corrected with exhibits?

9 COMMISSIONER BAEZ: We'll do it, we'll do it after,
10 after cross.

11 (REPORTER'S NOTE: For convenience of the record, Mr.
12 McDaniel's prefiled direct and rebuttal testimony were inserted
13 beginning on Page 27.)

14 MR. DODGE: Mr. McDaniel is available for cross.

15 COMMISSIONER BAEZ: Is he tendered? Thank you.

16 CROSS EXAMINATION

17 BY MS. MASTERTON:

18 Q Good morning, Mr. McDaniel.

19 A Good morning.

20 Q Mr. McDaniel, could you just explain what your job is
21 with ALEC?

22 A Yes, ma'am. I am the Director of Carrier Relations.
23 My main responsibility is negotiating interconnection
24 agreements. And it also involves at times -- after the
25 agreements have been negotiated, I help with the billing, how

1 we should do billing. Another function that I do sometimes is
2 with collocation and various things like that that, that the
3 company requires of me.

4 Q So, so in your job it requires you to be familiar
5 with the terms of various interconnection agreements between
6 your company and other carriers; correct?

7 A Say the last part.

8 Q Your job requires you to be familiar with the terms
9 of the interconnection agreements between your company and
10 other carriers; correct?

11 A Yes, ma'am.

12 Q Did you -- did you -- were you -- did you participate
13 in the negotiation of the Sprint/ALEC agreement?

14 A The -- no, ma'am, I have not.

15 Q And does your job -- in your job you would also be
16 required to be familiar with various state and federal
17 telecommunications laws and regulations; correct?

18 A Be familiar with. But if it's a legal thing, I, I go
19 to my local counsel or legal counsel.

20 Q Okay. First I wanted to take you to your direct
21 testimony, so I'll give you a minute. Do you have that up
22 there with you?

23 A Yes, ma'am.

24 Q Okay. I wanted to go specifically to Page 4, Line
25 19. And I believe that was a portion of your testimony for

1 which you filed corrected testimony on July 23rd, so you might
2 need to look at that as well.

3 A I believe that was one of the ones with a correction.
4 Yes.

5 Q Okay. In your testimony there you state that ALEC
6 has billed Sprint the actual lease cost for the recurring
7 portion of the DS-3 facilities that ALEC uses to transport
8 Sprint's traffic to its switch; is that correct?

9 A That's not exactly what it says. But in -- what it's
10 saying is with respect to the DS-3, we bill you the, the charge
11 that we pay to Time Warner.

12 Q Okay. Thank you.

13 And by that you mean that ALEC has billed Sprint what
14 ALEC has paid Time Warner for these facilities; is that
15 correct?

16 A Yes, ma'am.

17 Q Okay. And for this next series of questions I have
18 an exhibit or a document that I'd like to provide to you to
19 look at. And for identification purposes, I'd like to have
20 that marked. I'm going to pass that out.

21 COMMISSIONER BAEZ: Thanks.

22 MS. MASTERTON: And I guess for purposes of
23 identifying this, this document, we would call it ALEC/Time
24 Warner -- or just invoices from Time Warner and ALEC.

25 COMMISSIONER BAEZ: Okay. And that will be marked

1 Exhibit Number 9.

2 (Exhibit 9 marked for identification.)

3 BY MS. MASTERTON:

4 Q And what this document is, Mr. McDaniel, is invoices
5 that ALEC has billed Sprint, copies of invoices that ALEC has
6 billed Sprint taken from the documents you attached to your
7 complaint, and also some of the Time Warner invoices that Time
8 Warner billed to ALEC, and that came from your response to one
9 of Sprint's discovery requests. And the front page is just a
10 summary of that kind of for easy reference because it's a
11 little complicated to go through these bills.

12 So what I'd like you to do first is to turn to Page
13 23 of the, of the documents.

14 A Okay.

15 Q And this reflects Time Warner's bill to ALEC for the
16 three DS-3 facilities with an originating location of
17 1101 North Keller Road and a terminating location of 500 New
18 York Avenue; correct?

19 A This, this is the billing for the multiplex.

20 Q Okay. And then -- I just wanted to clarify though,
21 ALEC's switch in Maitland is 1101 North Keller Road; correct?

22 A That's correct.

23 Q And the address for Sprint's tandem in Winter Park is
24 500 New York Avenue; is that correct?

25 A That's correct.

1 Q So this is, this bill relates to the facilities that
2 Time Warner, that ALEC is leasing from Time Warner to provide
3 the DS-3 transport to Sprint; is that correct?

4 A No, ma'am. As I said, this is the multiplexing
5 charge. As I was mentioning in my summary, when we ordered the
6 DS-3 from Time Warner, our switch interfaces at a DS-3 level.
7 Our initial agreement with Sprint, we would interface at a DS-3
8 level. When Sprint started to place their trunk orders, they
9 found that their orders would not go through because there was
10 a gap, there was no way to get from a DS-1 to a DS-3. Sprint
11 contacted us. We ordered the multiplexing.

12 When we ordered the multiplexing, Time Warner did
13 that, they changed the circuit IDs. These are the new circuit
14 IDs that were changed after we ordered the multiplexing. They
15 started billing us only the multiplexing.

16 Q So are you saying that Time Warner billed ALEC
17 something in addition to, to these charges during the time
18 frame that's represented on this invoice?

19 A No, ma'am.

20 Q Okay. So, so let me ask, does this, does this bill
21 represent what ALEC was being billed by Time Warner for those
22 facilities for the time period represented by this invoice?

23 A At the time. But there was a billing error at Time
24 Warner.

25 Q But this does represent what ALEC was being billed by

1 Time Warner; correct?

2 A Yes, ma'am. It is not our, our, I guess our
3 obligation to Time Warner. There is an outstanding balance
4 that we owe them right now for about \$101,000 that represents
5 the DS-3s that they omitted from this billing.

6 Q And maybe this is a good time to look at the exhibit
7 that we put into the record earlier. I think it was Exhibit
8 Number 5, the --

9 COMMISSIONER BAEZ: The E-mail?

10 MS. MASTERTON: The invoice and the E-mail provided
11 by Time Warner.

12 BY MS. MASTERTON:

13 Q I guess I'd like you to explain to me what this is.

14 MR. DODGE: Susan, were you going to provide a copy
15 to the witness?

16 BY MS. MASTERTON:

17 Q Do you not have a copy of the exhibits that we had?
18 I mean, I'll provide them to you. I --

19 MR. DODGE: I'm happy to share mine, if you don't
20 have an extra copy.

21 MS. MASTERTON: I may have only my copy that you gave
22 me this morning, but --

23 COMMISSIONER BAEZ: Mr. Dodge, you can go ahead and
24 offer him your copy, if you don't mind. Thank you.

25 BY MS. MASTERTON:

1 Q I'm sorry. Because I didn't get this until this
2 morning either, so I wasn't able to make additional copies. I
3 just wanted to, I guess, because I really -- to explain to me
4 what this first document is, the one that appears to be a bill
5 from Time Warner to Duro Comm.

6 A I'm not sure which document you're on. Are you
7 talking about the Time Warner bill?

8 Q Yeah. It's got up at the top -- I don't know. It
9 says "Petitioner's Exhibit 1," and it's a bill dated July 15th,
10 2002, Account Number 13594.

11 COMMISSIONER BAEZ: That would be the third page.

12 THE WITNESS: Okay. I have it. I have that.

13 BY MS. MASTERTON:

14 Q Well, could you explain to me what this is?

15 A This is a bill from Time Warner for various
16 facilities and circuits that we lease from Time Warner, not
17 necessarily just to Sprint, but all of our Time Warner billing
18 on this particular account.

19 Q And could you, I guess, point to me the bills that
20 might relate to the -- the billing that might relate to Sprint
21 on this invoice?

22 A Yes, ma'am. If you look at the top where the, I
23 guess the fax is, Page 4 of 9, you see Circuit ID
24 301/T3/ORLEFLCFW00/WNPKFLXEW03, and you see the two locations,
25 Location A and Location Z, being your tandem and our switch.

1 Q I think you kind of lost me with that circuit number.
2 I wonder, would it be easier to do it by addresses?

3 A Okay. I'm sorry.

4 COMMISSIONER BAEZ: Mr. McDaniel, is it fair, is it
5 just the second-to-last entry, is that --

6 THE WITNESS: Yes, sir. I'm sorry. I'm sorry. Yes,
7 sir. Second to the last.

8 BY MS. MASTERTON:

9 Q On Page 4?

10 COMMISSIONER BAEZ: At the top of the fax stamp it
11 says "Page 004/009."

12 MS. MASTERTON: Okay. I'm sorry. I was looking at
13 Page 4 of the bill. No wonder I couldn't find it. Okay. All
14 right. I'm there.

15 BY MS. MASTERTON:

16 Q So that -- tell me -- that is a bill -- tell me what
17 that -- what Time Warner -- please tell me what Time Warner is
18 billing ALEC for in reference to that circuit?

19 A Okay. All right. In the -- you'll see to the left
20 the DS-3 under Location A and Z.

21 Q Right.

22 A And then to the right, let's start in the middle
23 there, 7/15 to 8/14, there's a \$2,934. That is the cost of the
24 DS-3 and the multiplexing.

25 Now above that there is \$1,253.02. I believe that to

1 be the portion of the DS-3 billing since the last billing went
2 from June 14th, excuse me, June 15th, to July 14th. So that's
3 a partial billing there. And then there's a credit on the
4 bottom of \$2.36 and 53, \$236, excuse me, and 53 cents credit,
5 making the total \$3,950.49.

6 Q So is this the corrected billing from Time Warner
7 that you referenced in your opening statement and also in this
8 E-mail that's part of this Exhibit Number 5 from Paul Potter to
9 ALEC --

10 A Yes, ma'am.

11 Q Did -- has Time Warner billed ALEC any backbilling
12 based on this revised amount?

13 A Not at this time.

14 Q And has ALEC paid any bills based on the amounts that
15 are referenced in this invoice to date?

16 A Have we paid this bill? I do not know. I assume
17 that we have. This is July 15th; between now and August 15th
18 we should pay it.

19 Q So this would be the first time that ALEC would pay
20 the amounts to Time Warner that are referenced in this bill; is
21 that correct?

22 A The total, yes, ma'am. There are some prior bills
23 that we paid \$2,334, I believe, back in the early April time
24 frame. That was the original bill from Time Warner that we
25 paid for the DS-3 before there was any multiplexing involved.

1 Q Thank you. Now I want to go, I want to go back to,
2 to talk about what ALEC has been billing Sprint, and for that I
3 need to refer you -- and I can give you a copy of this one.
4 It's one of the stipulated exhibits that we entered in this
5 morning. It's part of Exhibit 3, and let me bring you a copy.
6 I believe that the Staff and the Commissioners have copies
7 already, so.

8 (Pause.)

9 . And what I'd like you to look at is ALEC's response
10 to Sprint's Interrogatory Number 2 or, I'm sorry, I mean,
11 Number, Number 1.

12 A Okay. I believe I'm there.

13 Q Okay. And in that interrogatory you state that, that
14 ALEC pays a monthly total of \$3,608.82 to Time Warner per DS-3;
15 is that correct?

16 A Yes, ma'am.

17 Q Is that correct? Is that what ALEC pays Time Warner?

18 A I believe that is going to be the correct amount once
19 all the adjustments are worked out for, for the monthly, that's
20 what we will pay on a recurring basis going forward.

21 Q Well --

22 A And, and going back if, when and if Time Warner bills
23 us.

24 Q Because I wanted to -- and I'm sorry, Jon, because I
25 do have, Mr. Moyle, I do have another question on that E-mail.

1 In your response to the Interrogatory Number 1 you
2 indicate that, that it's the \$2,934 plus the \$600 multiplexing
3 charge; is that correct?

4 A Maybe, maybe there's a wording in there. It's saying
5 we pay a monthly total of \$3,608.82 per DS-3, which includes a
6 base rate of \$2,934 tax and it includes a \$600 multiplexing.
7 So the \$2,934 is the \$2,334 that we pay for the DS-3 facility,
8 that's the BIT stream; the \$600 is for the multiplexing.

9 Q Okay. And I just wanted you to look at that E-mail
10 from Paul Potter to ALEC down in the, the next to the last
11 paragraph and read to me what it says where it starts with
12 "each."

13 A The next to the last paragraph?

14 Q Yeah, on the E-mail. So the last paragraph is, I
15 will contact you. And right above that starting with "each,"
16 please read that to me.

17 A Time Warner Telecom, Inc., apologizes for this error
18 and any inconvenience it has caused Duro Communications. We
19 have corrected billing effective on July 15th, 2002. Each
20 circuit will now bill \$2,934, which includes a DS-3 with muxing
21 option 8. This correction will bring harmony between the
22 contracted amounts and the bills.

23 Q So would you agree though that what Mr. Potter is
24 saying is that that \$2,934 includes the multiplexing?

25 A Yes, ma'am.

1 Q So your response to, to Interrogatory Number 2, this
2 \$3,608.82, that doesn't really represent anything that Time
3 Warner has billed ALEC, does it?

4 A I believe -- I cannot prove it to you down to the
5 penny, but if you took those adjustments out that's in there
6 for the partial and the, the other credits and added the tax,
7 you would come up with the \$3,608.82. I took the 23, excuse
8 me, \$2,934 and multiplied the tax to that to come up with the
9 \$3,608.82.

10 Q But do you agree that Mr. Potter seems to indicate
11 that the \$600 multiplexing charge is included in the \$2,934?

12 A Yes, ma'am.

13 Q Okay.

14 A Let me, let me repeat what I said. I took the
15 \$2,934, added the tax to come up with the \$3,608, which is the
16 total that we're paying for Time Warner for that
17 interconnection facility between your switch and our switch.

18 Q I don't really want to belabor this, but it looked to
19 me like you added the \$2,934 and the \$600.

20 A It could be interpreted that way.

21 Q That's not what you were intending to say?

22 A But it says it includes a base rate of \$2,934 and
23 included in that is the multiplexing. That's probably my
24 English.

25 Q Okay. That's okay. That's okay. I don't want to

1 belabor that. I guess what I want you to do now though is --

2 COMMISSIONER PALECKI: Well, excuse me one moment.

3 THE WITNESS: Yes, sir.

4 COMMISSIONER PALECKI: Because I would like to
5 belabor it until it's clear in my mind. And I'm not sure what
6 you are being billed by Time Warner. Is it the \$2,934 or is it
7 the \$2,934 plus the \$600?

8 THE WITNESS: The \$600 -- excuse me, sir. I'm sorry.

9 COMMISSIONER PALECKI: \$600 is the multiplexing
10 charge; correct?

11 THE WITNESS: That's correct.

12 COMMISSIONER PALECKI: Which are you being billed?

13 THE WITNESS: The \$2,934, that is made up of \$2,334
14 for the DS-3 facility and a \$600 multiplexing charge.

15 COMMISSIONER PALECKI: Now you've stated that AOL
16 mistakenly or in error has charged you too little and that you
17 expect that they will in the future require you to pay those
18 past charges, is that what you've stated?

19 THE WITNESS: Yes, sir.

20 COMMISSIONER PALECKI: Could you please explain the
21 scenario? Who brought the error to Time Warner's attention?
22 Was it you or did they figure out the error? Could you please
23 explain what happened in plain English?

24 THE WITNESS: Yes, sir. When we got the discovery
25 from Sprint asking for the Time Warner bills, I contacted the

1 Florida office and asked for these, and we could, you know, all
2 we could find was the \$600 from, I don't know the exact date,
3 but we had one bill that had the \$2,334 initially, which was
4 for the DS-3 only. After that -- and, again, I don't want to
5 get, maybe I'm going too far, but there were specific circuit
6 IDs identified with that \$2,334. When we ordered additional
7 multiplexing to get the Sprint DS-1s up to the DS-3 to carry it
8 over to our switch, then Time Warner changed the circuit IDs to
9 these you see on here. Well, if you have the E-mail, you'll
10 see the old circuit ID and the new circuit ID.

11 COMMISSIONER PALECKI: Which exhibit number are you
12 referring to that has the two IDs?

13 THE WITNESS: It's Number 5, Exhibit 1, I believe.

14 COMMISSIONER PALECKI: And which page?

15 THE WITNESS: It's Page 1 of 1. It's an E-mail from
16 Paul Potter to myself.

17 COMMISSIONER PALECKI: All right.

18 THE WITNESS: Right above the paragraph that
19 Ms. Masterton asked me to read.

20 COMMISSIONER PALECKI: Thank you.

21 THE WITNESS: Do I need --

22 COMMISSIONER PALECKI: Do you have anything further
23 to explain? Well, then what happened, just --

24 THE WITNESS: Let me go ahead and tell you what
25 happened.

1 When we got the discovery, I contacted the Florida
2 accounting people and asked them to make copies of the Time
3 Warner bills. At that time they could only find the ones that
4 had the \$600 charges on it. And we felt like, well, it's
5 probably on a different account, and so we searched through all
6 our Time Warner billing and could not find that.

7 And so I contacted Mr. Porter via telephone and said
8 that, you know, you're billing us \$600, and explained to him
9 the multiplexing situation and it appears to me that that may
10 be what, what happened.

11 And then he called me back later on and said that I
12 was correct, that they had not, you know, they'd made an error
13 in their billing and had not billed us for the DS-3s, and also
14 stated to me that, it is amazing that someone did not already
15 take those DS-3s from you since in our inventory they aren't
16 shown as your circuits. But they made a correction at that
17 time and then sent this E-mail to me stating what they were
18 going to bill us in the future.

19 COMMISSIONER PALECKI: And what about backbilling?

20 THE WITNESS: Mr. Potter is discussing that with his
21 manager or supervisor at this time as far as I know. They have
22 told me that the liability is \$101,000, and they have not
23 determined what portion of that they will bill, whether it'll
24 be all or a portion of it.

25 COMMISSIONER PALECKI: So --

1 THE WITNESS: They do know, they do know that we
2 called it to their attention, so.

3 COMMISSIONER PALECKI: So since you're not aware or
4 ALEC is not aware of the amount that they will be backbilled by
5 Time Warner, they're not asking us, you're not asking us to go
6 ahead and require Sprint to, to pay those amounts?

7 THE WITNESS: What I would ask of you is that
8 whatever Time Warner bills us, whether it's the full amount, a
9 partial amount, whatever, for that is what we would ask the
10 Commission to allow us to recover from Sprint.

11 COMMISSIONER PALECKI: Thank you.

12 BY MS. MASTERTON:

13 Q Okay. Yeah. And, Mr. McDaniel, along the lines of
14 Commissioner Palecki's question, I'd like to turn to Page 2 of
15 this document that I provided to you, Page 2 of the set of ALEC
16 and Time Warner bills.

17 A This?

18 Q Yes.

19 MR. MOYLE: Are we done with Exhibit 5?

20 MS. MASTERTON: As far as I know, we are. I can't
21 really -- I can't promise, but.

22 BY MS. MASTERTON:

23 Q And this shows a bill from ALEC to Sprint for three
24 DS-3 facilities at the rate of \$3,103 per DS-3; is that
25 correct?

1 A Yes, ma'am.

2 Q And was ALEC billing this amount to Sprint during the
3 time frame in which Time Warner was billing ALEC only the \$600
4 for the multiplexing?

5 A Yes, ma'am.

6 Q And this \$3,103, does that, does that represent the,
7 the new amount that Time Warner is billing in the July 15th,
8 2002, bill?

9 A No, ma'am.

10 Q Does it represent the amount of \$3,602.82, I think it
11 was, that you referred to in your response to Sprint's
12 Interrogatory Number 2?

13 A That's what -- this bill would be based on the new
14 billing from Time Warner, including the multiplexing.

15 Q Excuse me. I -- that's what -- I didn't understand
16 your answer. Could you reexplain?

17 A Okay. This bill reflects the DS-3 only and what we
18 were advised that Time Warner would bill us for that prior to
19 the multiplexing.

20 Q But, in fact, this bill, this amount does not reflect
21 anything that Time Warner was actually billing ALEC; is that
22 correct?

23 A There was one month where we were billed the \$2,334,
24 the initial month prior to ordering the multiplexing, that
25 would relate, when you put taxes on it, to this amount.

1 Q So you're saying \$2,334 plus tax would equal \$3,103;
2 is that correct?

3 A That was my understanding from Time Warner.

4 Q So there'd be \$700 worth of tax on that; is that what
5 you're saying?

6 A Yes, ma'am.

7 Q But, but ALEC is not really -- would you agree that
8 ALEC has not billed Sprint the actual lease cost for the Time
9 Warner facilities, as you state in your testimony?

10 A Based on the billing error, that is true.

11 Q So ALEC has not billed Sprint the actual lease cost;
12 is that correct?

13 MR. DODGE: Objection.

14 THE WITNESS: Based on the billing error --

15 MR. DODGE: Objection, Your Honor.

16 BY MS. MASTERTON:

17 Q Could you just answer that yes or no?

18 COMMISSIONER BAEZ: Hold on, Ms. Masterton.

19 MR. DODGE: Objection, Your Honor. I think that was
20 asked and answered.

21 MS. MASTERTON: Well, I'm looking for a yes or no
22 answer and I hadn't got that.

23 COMMISSIONER BAEZ: The answer should be preceded by
24 a yes or no, and we're going to do it one more time just to
25 clear it up.

1 BY MS. MASTERTON:

2 Q So ALEC, in fact, has not billed Sprint the actual
3 lease cost that it is paying Time Warner; is that correct?

4 A That's correct.

5 Q Thank you. Now I'd like to look at your rebuttal
6 testimony on Page 7, Lines 15 through 22, and I think we also
7 would need to refer to that corrected testimony that you filed
8 on July 23rd because I think that amended that, that section of
9 your testimony.

10 COMMISSIONER BAEZ: Ms. Masterton, what page are you
11 referring to? I'm sorry.

12 MS. MASTERTON: It's Page 7 of the rebuttal
13 testimony.

14 COMMISSIONER BAEZ: Okay. Thank you.

15 MS. MASTERTON: Lines 15 -- actually I think I mean
16 Lines 15 through 17.

17 COMMISSIONER BAEZ: Okay.

18 MS. MASTERTON: And then there's a two-page document
19 that they also provided that revised a couple of columns of
20 that that's applicable as well.

21 COMMISSIONER BAEZ: Yeah. Corrections.

22 THE WITNESS: I'm sorry. Would you give me the page
23 again on the rebuttal?

24 BY MS. MASTERTON:

25 Q It's Page 7, and it's actually -- I said Lines 15

1 through 22, but I meant Lines 15 through 17. And then also
2 it's important to look at the revisions, too, because you
3 indicate that as far as your billing to Sprint based on the
4 actual lease cost, that that's, that applies only to the
5 recurring DS-3 charges; is that correct?

6 A Mainly. If you look at the nonrecurring charges that
7 we paid to Time Warner for the DS-3s, we actually billed you
8 less than what we paid Time Warner.

9 Q So it wasn't the actual lease cost though, was it?

10 A For the installation it was not the actual lease
11 cost, it was less. It was our tariff rate.

12 Q Thank you.

13 COMMISSIONER PALECKI: May I jump in here for one
14 moment?

15 Do we have a correct bill from AOL/Time Warner that
16 reflects your correct charge for both the DS-3 and the
17 multiplex? Do we have anything in the record before us where
18 AOL/Time Warner has correctly billed ALEC where you haven't had
19 to make any sort of a calculation with regard to taxes or
20 anything else? Is there anything we have?

21 THE WITNESS: Based on this Exhibit 1 that we talked
22 about on page --

23 MR. DODGE: Mr. McDaniel, hold on.

24 MR. MOYLE: Just so we're all clear, I think it's
25 exhibit, Composite Exhibit 5. And there's an attachment to it

1 which we had previously marked as 1, but it is part of Exhibit
2 5.

3 COMMISSIONER PALECKI: And the reason I'm asking the
4 question, just to let counsel know, is that if we don't, we, I
5 don't think this Commission wants to make a decision on these
6 numbers without the correct information before us. And we have
7 the ability at this Commission to ask for a late-filed exhibit,
8 and it may be that I will want to ask ALEC to provide us with
9 the next bill from AOL/Time Warner to see if they have actually
10 corrected the situation and to see if their calculations are
11 the same as yours.

12 THE WITNESS: Okay.

13 MR. DODGE: Commissioner, if I may, the newest Time
14 Warner bill that you have before you as part of Composite
15 Exhibit 5 was provided by ALEC to Sprint this morning as part
16 of our continuing discovery obligation to make those bills
17 available to Sprint. And, of course, as either a late-filed
18 exhibit or coming through Composite Exhibit 5, we're delighted
19 to make available the even newer Time Warner billing as it
20 becomes available to us.

21 COMMISSIONER PALECKI: Well, I have that before me.
22 So if the witness could explain to me exactly -- I guess
23 because we have credits and past months' bills, it's not that
24 clear to me what I'm looking at here. And if you could explain
25 that again for --

1 THE WITNESS: The monthly rate that we will pay and
2 we pay in advance -- you'll see 7/15 through 8/14 is the middle
3 line in that one DS-3.

4 COMMISSIONER PALECKI: Yes.

5 THE WITNESS: Second one from the bottom.

6 COMMISSIONER PALECKI: And that's \$2,934.

7 THE WITNESS: Yes, sir.

8 COMMISSIONER BRADLEY: Excuse me. I'm trying to find
9 where we are in terms of --

10 COMMISSIONER PALECKI: And is that the entire amount
11 of both the DS-3 and the multiplexing?

12 THE WITNESS: Yes, sir. That's everything except
13 tax.

14 COMMISSIONER PALECKI: And why have they not added
15 tax on a bill that they sent to ALEC? I mean, this is an
16 actual bill, I believe, from AOL to ALEC, but they wouldn't
17 have included the tax?

18 THE WITNESS: Yes, sir. All the taxes on the total
19 amount is on the Page 8 of 8.

20 COMMISSIONER PALECKI: All right. So they just
21 waited for the last page and then gave you a full amount of the
22 tax on all of the charges?

23 THE WITNESS: Yes, sir.

24 COMMISSIONER PALECKI: So you've gone ahead and done
25 mathematical calculations from, from there to add the tax onto

1 the \$2,934?

2 THE WITNESS: Yes, sir.

3 COMMISSIONER PALECKI: And what is the amount of the
4 tax?

5 THE WITNESS: \$3,608.82.

6 COMMISSIONER PALECKI: That's the amount including
7 the tax?

8 THE WITNESS: Yes, sir.

9 COMMISSIONER PALECKI: How much is the tax that rises
10 it from --

11 THE WITNESS: I believe it's about 27 percent or
12 something like that. I don't have the exact numbers.

13 COMMISSIONER PALECKI: Okay. So I think I understand
14 now. So the tax actually increases at that significant a
15 dollar amount?

16 THE WITNESS: Yes, sir.

17 COMMISSIONER PALECKI: Thank you.

18 THE WITNESS: And we will be happy to provide the
19 next month's billing. Hopefully it'll be much cleaner for each
20 of those DS-3s, only the \$2,934. But, still, the way Time
21 Warner bills, you would have to go back to the back page to see
22 what the taxes are.

23 COMMISSIONER BAEZ: Commissioner Palecki, are you
24 still interested in the late-filed exhibit?

25 COMMISSIONER PALECKI: Yes. I would like to see that

1 late-filed exhibit, if there's no objection from any of the
2 parties.

3 COMMISSIONER BAEZ: Any objections?

4 MS. MASTERTON: No objection.

5 COMMISSIONER BAEZ: Okay. Show late-filed Exhibit 10
6 as a copy of a current or next month's statement from Time
7 Warner to ALEC, Inc.

8 (Late-filed Exhibit 10 identified.)

9 COMMISSIONER PALECKI: And just to have a time by
10 which you need to provide that to us, when will you be
11 receiving the next bill? I guess it's exactly a month from
12 when you received this bill.

13 THE WITNESS: Yes, sir.

14 COMMISSIONER PALECKI: And this bill is dated
15 July 15th.

16 THE WITNESS: Right. I was trying to look and see.
17 I cannot read on this copy when we actually received the bill,
18 but I would think it would be probably five to ten days from
19 the July 15th time frame that we would actually receive the --

20 COMMISSIONER BAEZ: You mean from the August 15th?

21 THE WITNESS: Yes, sir.

22 COMMISSIONER BAEZ: Okay. End of August?

23 COMMISSIONER PALECKI: I think the end of August
24 would give you more than adequate time. But if you do get it
25 sooner, we'd appreciate it if you could provide that as soon as

1 you receive it.

2 COMMISSIONER BAEZ: Is that clear?

3 MR. DODGE: Sure.

4 BY MS. MASTERTON:

5 Q But in light of this, I feel like I need to ask you
6 again that ALEC has been billing Sprint the \$3,103 per DS-3
7 during the same time frame that Time Warner was billing ALEC
8 the \$600 per DS-3; is that not correct?

9 A That is correct.

10 Q So Sprint has paid -- and I think I actually -- we
11 could look at the summary document to help you, but how much
12 has Sprint paid ALEC to date in, in recurring charges for
13 DS-3s?

14 A Nothing.

15 Q How much has ALEC billed Sprint to date in recurring
16 charges for DS-3s? Let me correct that question.

17 A I believe the last I looked, to date, and it may not
18 include this month, around \$148,000.

19 Q And on a monthly basis how much is ALEC billing
20 Sprint for recurring charges for DS-3s?

21 A In the past we have been billing \$3,103 for it.

22 Q Times three; correct? So that's \$9,309?

23 A Yes.

24 Q And Time Warner has been billing ALEC \$1,800 in
25 recurring charges; is that correct?

1 A Yes, ma'am.

2 Q Thank you. Now I want to, I want to go back to this
3 packet of bills and, and look at the nonrecurring charges that
4 Time Warner has billed ALEC to date. And I think if you look
5 at Page 12 --

6 A Okay.

7 Q -- does that represent the nonrecurring charges that
8 Time Warner billed ALEC for the DS-3 facilities?

9 A Yes, ma'am.

10 Q The \$680; is that correct?

11 A That's correct.

12 Q And has Time Warner billed ALEC any other
13 nonrecurring charges for the Winter Park to Maitland
14 facilities?

15 A No, ma'am.

16 Q Well, I was, I had understood that there were some
17 nonrecurring charges associated with the multiplexing; is that
18 not correct?

19 A There may have been. They're not on this, this Page
20 12.

21 Q I think if you look at Page 20.

22 A Page 20?

23 Q Yes.

24 A Yes, ma'am. I was in error there. There is another
25 150 for the multiplexing.

1 Q So for nonrecurring charges for the facilities that
2 ALEC uses to provide transport to Sprint, is it correct to say
3 that Time Warner has billed \$680 plus \$150 times three in
4 nonrecurring charges to ALEC?

5 A Yes, ma'am.

6 Q Thank you. Is Time Warner billing ALEC any charges,
7 recurring or nonrecurring, for DS-1 facilities?

8 A No.

9 Q And is Time Warner billing ALEC any recurring or
10 nonrecurring charges for DS-0 facilities?

11 A No. We're not ordering any DS-1s or DS-0s from Time
12 Warner.

13 Q I want to -- now I want you to look again at the, in
14 the same exhibit at the bills that ALEC has billed Sprint, and
15 specifically I wanted to look at the amount that ALEC has
16 billed Sprint for nonrecurring charges for DS-3 facilities.
17 And I think that is found on -- let me see if I can find the
18 page on that one. Page 24.

19 MR. DODGE: Your Honor, I would note that at least in
20 my copy we seem to have early on -- strike that. I thought we
21 only had even numbered pages, but I see now that my pages were
22 stuck together.

23 COMMISSIONER BAEZ: You found where you are? Okay.

24 MR. DODGE: What page were you on?

25 MS. MASTERTON: Page 24 is what we're looking at.

1 MR. DODGE: Thank you.

2 BY MS. MASTERTON:

3 Q Would you agree that this \$1,807.26 is the amount
4 that ALEC has billed to Sprint in nonrecurring DS-3 charges?

5 A Yes, ma'am, for DS-3s.

6 Q Okay. And now I want to look at the nonrecurring
7 charges for the DS-1s, and because those -- would you agree
8 that those are continuing in nature, there's not just one bill
9 that would represent those charges?

10 A (Nods affirmatively.)

11 Q Okay. So that's part of the reason why we provided
12 this summary page. I think the, the nonrecurring charges for
13 both DS-1 and DS-0 facilities are found on, beginning on Page
14 24 or, no, Page 25 and then going through Page 41. And these
15 are just an example of the bill that was rendered on July 11th
16 for those nonrecurring facilities. And do we agree that there
17 are additional bills subsequent to that date for nonrecurring
18 charges for DS-1s and DS-0s?

19 A I believe they were. As we add new trunks, we would
20 bill you the nonrecurring charges.

21 Q So based on what we've provided you today, the bills
22 that were rendered to Sprint on July 11th, what's the total
23 amount of nonrecurring charges for DS-1s and DS-0s that ALEC
24 has billed Sprint?

25 A If I'm reading your summary sheet right, on Line

1 31 it's \$517,045.23.

2 Q And would you agree, subject to check of the math,
3 that that is the amount that, that ALEC has billed Sprint for
4 these facilities on July 11th?

5 A Subject to check.

6 Q And, once again, Time Warner has billed ALEC to date
7 for nonrecurring charges the \$680 plus \$150 times three, which
8 I calculated to be \$2,490; is that correct?

9 A That's what they have billed us for the DS-3.

10 Q But that's all the nonrecurring charges that you've
11 been billed by Time Warner; is that correct?

12 A Yes, ma'am. That's all we have ordered.

13 Q Did Sprint order DS-3 facilities from ALEC?

14 A No, ma'am. You, you, your company asked us to
15 provide the DS-3 facility to interconnect our companies.

16 Q Did I understand you to say that Sprint asked ALEC to
17 provide the DS-3 facility?

18 A Yes, ma'am.

19 Q So you're saying that Sprint ordered the DS-3
20 facility from ALEC; is that correct?

21 A No, ma'am. When they asked us to provide them, we
22 ordered them from Time Warner, excuse me, Time Warner.

23 Q So I guess I'm having trouble understanding the
24 difference between "asked us to provide" and "ordering." Could
25 you explain that to me?

1 A When you say ordering, I'm assuming you mean did we
2 send an order to you or did you send an order to us for the
3 DS-3, and there was no order sent between the two companies for
4 the DS-3.

5 In the planning meeting with your, your people,
6 Sprint said, we're going to hand off the traffic at the tandem,
7 you know, you provide the facility to get it to the, to your
8 switch. And we said, per the contract we'll be compensated for
9 that. And there was a yes, an agreement that we would be
10 compensated for that interconnection facility.

11 Q What facilities did Sprint order from ALEC?

12 A Sprint has ordered all the DS-1s and all the DS-0s.

13 Q But they did not order DS-3s?

14 A That's correct.

15 Q Thank you. Now I guess we can put these bills away
16 because I'm done with that line of questioning. And I'd like
17 to move to some questions relating to the interconnection
18 agreement.

19 A I'm sorry. Where are you going?

20 Q To the interconnection agreement, which was entered
21 as one of the Staff stipulated agreements, exhibits. I think
22 it was Number 2, so we can be --

23 COMMISSIONER BAEZ: That would be Exhibit 2.

24 Correct.

25 THE WITNESS: Okay.

1 BY MS. MASTERTON:

2 Q Do you have it? Okay.

3 A Yes, ma'am.

4 Q And I'm sorry, but we're also going to need to refer
5 back to your direct testimony on Page 4, Lines 8 to 16.

6 Okay. Are you there?

7 A Page 4?

8 COMMISSIONER BAEZ: Ms. Masterton, what line?

9 MS. MASTERTON: Oh, I'm sorry. Lines -- I'm sorry,
10 Commissioner. Starting on Line 8 and going through Line 16.

11 BY MS. MASTERTON:

12 Q And in your testimony you state that Section 2.2.3 of
13 the agreement governs the appropriate charges for ALEC to bill
14 Sprint-originated traffic that is transported over the
15 facility's ALEC leases from Time Warner; is that correct?

16 A I don't, I don't see that reference on Page 4 of
17 my -- let me make sure I'm in the right place.

18 Q What I'm -- I'm reading starting on Line 8. It says
19 the agreement also -- yeah.

20 A I'm sorry. I'm in the rebuttal. Hang on just a
21 minute. I went to the wrong tab.

22 MR. DODGE: Susan, why don't we start from the
23 beginning on the page number and then --

24 BY MS. MASTERTON:

25 Q Okay. I'm sorry. It's Page 4 of your direct

1 testimony, starting on Line 8, and it seems to begin, or the
2 sentence I'm looking at, the agreement also governs the level
3 of ALEC's transport charges, Section 2.2.3 of Attachment IV of
4 the agreement, et cetera.

5 A I'm sorry. I'm there now. Line 8.

6 Q Okay. I just wanted you to confirm for me that, that
7 you're saying that Section 2.2.3 of the agreement governs the
8 appropriate charges for ALEC to bill Sprint for
9 Sprint-originated traffic that is transported over the
10 facilities ALEC leases from Time Warner. Is that what that
11 portion of your testimony is saying?

12 A This portion of my testimony -- excuse me. This
13 portion of my testimony is saying that for the interconnection
14 facility, the DS-3 portion, that's what this is talking about,
15 we provide 100 percent of the interconnection facility via a
16 lease from a third party. That's -- and we're billing you what
17 we pay for that lease facility.

18 Q But in your testimony you do agree that
19 Section 2.2.3 of Attachment IV of the agreement is the
20 governing provision; correct?

21 A For the interconnection facility. There's two
22 compensations: There's interconnection facility and there's a
23 call transport and termination. For the DS-1s and the DS-0s,
24 that's the call transport and termination, and I believe that's
25 in Section 2.3.

1 Q And can you -- I just want to turn to the agreement
2 now to Section 2.2.3 of Attachment IV.

3 COMMISSIONER BRADLEY: What's the number of that
4 exhibit?

5 COMMISSIONER BAEZ: Exhibit 2.

6 MS. MASTERTON: I think that's page one hundred and
7 --

8 THE WITNESS: 2.3 is on Page 120.

9 BY MS. MASTERTON:

10 Q Right. That's correct. I was going to say 119, but
11 it is 120.

12 And could you read what Section 2.2.3 says about the
13 charges that ALEC assessed when it's providing 100 percent of
14 the interconnection facility? So I guess read for me the
15 introductory paragraph to 2.2.3, and that actually is on Page
16 119.

17 A You're on --

18 Q Page 119.

19 A And give me the section number. I'm sorry.

20 Q 2.2.3.

21 A 2.2.3. And this is under the 2.2, which is
22 interconnection compensation.

23 Q Right. And I want you to read for me the
24 introductory paragraph.

25 A Okay. If CLEC provides 100 percent of the

1 interconnection facility via lease of meet-point circuits
2 between Sprint and a third party; lease of third-party
3 facilities; or construction of its own facilities; CLEC may
4 charge Sprint for proportionate amount based on relative usage
5 using the lesser of.

6 Q Okay. And what do you think that means, "the lesser
7 of"?

8 A It's -- it means the lesser of, whichever is the
9 least.

10 Q Okay. Could you go -- now let's go through the, the
11 three options --

12 A Okay.

13 Q -- starting at 2.2.3.1 through 2.2.3.3.

14 A Okay. The way the contract reads, Sprint's -- the
15 lesser of 2.2.3.1, Sprint's dedicated interconnection rate, and
16 there's a semicolon, its own costs if filed and approved by a
17 commission of appropriate jurisdiction, another semicolon, and
18 the actual lease cost of the interconnecting facility.

19 Q Okay. Thank you. And I think we need to look at
20 Table 1 in the agreement at this point, and that, that starts
21 on -- I think I'm looking at Page 44 of the agreement. And I
22 want you to look at, at the rate under reciprocal compensation
23 for DS-3. So it's, you know, it's about three-quarters of the
24 way down the page.

25 A Recurring or nonrecurring?

1 Q I want you to look at the nonrecurring rate and tell
2 me what that is.

3 A \$86.28.

4 Q And, and ALEC is billing Sprint the \$680 plus \$150
5 for each DS-3 in nonrecurring charges; is that correct?

6 A Yes, ma'am. That's the nonrecurrings for the DS-3
7 and the multiplexing. The \$150 is for the multiplexing.

8 Q Okay. So it's -- ALEC is billing Sprint \$680 in
9 nonrecurring charges for the DS-3 itself; is that correct?

10 A We're not billing you that amount. We billed you the
11 tariff rate, which totalled up to \$1,807 and some pennies. I
12 don't remember the exact amount.

13 Q And how much is that per DS-3?

14 A It starts out \$827 for the first and then 400 and
15 something for each additional.

16 Q Okay. So do you agree that the rate that Time Warner
17 is billing ALEC is \$680 per DS-3?

18 A Yes.

19 Q And the rate that ALEC is billing Sprint is the, what
20 you just, I can't remember the numbers, the \$800 and something
21 per for the first one and --

22 A For the first, and \$400 for the second.

23 Q And do you agree that the agreement has a rate,
24 nonrecurring rate for DS-3s of \$86.26?

25 A Yes, ma'am.

1 Q And of those three numbers, which one would you say
2 is the lesser of?

3 A Of course, the one in the contract.

4 Q Okay. Thank you.

5 COMMISSIONER PALECKI: If I could jump in here. If
6 the one in the contract is the lesser rate under
7 Section 2.2.3 that you've just read to us, should the one in
8 the contract apply?

9 THE WITNESS: No, sir, because we did not order the
10 facilities from, from Sprint. Had Sprint provided those, the
11 DS-3, we would not have billed Sprint any DS-3 facility.

12 COMMISSIONER PALECKI: So you're saying the 2 point
13 --

14 THE WITNESS: And also the contract -- I'm sorry. I
15 didn't mean to interrupt you.

16 COMMISSIONER PALECKI: Are you saying the
17 2.2.3 applies only if you order the facilities from Sprint, is
18 that your --

19 THE WITNESS: Yeah. We're providing the 100 percent,
20 if we had gotten those from Sprint, that Sprint would have
21 billed us that amount and we would, in turn, bill Sprint that
22 same amount back instead of Time Warner.

23 COMMISSIONER PALECKI: Okay. Let's look together at
24 2.2.3. If CLEC provides 100 percent of the interconnection
25 facility via lease of meet-point circuits between Sprint and a

1 third party, lease of the third -- well, first, is that
2 occurring here?

3 THE WITNESS: A lease of meet-point circuits, is that
4 what --

5 COMMISSIONER PALECKI: Yes. Lease of meet-point
6 circuits between Sprint and a third party.

7 I'm trying to figure out if 2.2.3 applies in this
8 situation or not.

9 THE WITNESS: I believe it does. We're -- it's a
10 lease of a third-party facility. The next, the next portion
11 there in the semicolon.

12 COMMISSIONER PALECKI: Okay. Lease of a third-party
13 facility or construction of its own facility. And then you go
14 down to the lesser of the three options. And I'm not sure I
15 understand why the lesser of these three options should not
16 apply in your opinion.

17 THE WITNESS: The way I interpret the contract,
18 2.2.3.1, Sprint's dedicated interconnection rate, and you see
19 the semicolon, but then the next section, its own costs if
20 filed and approved by a Commission of appropriate jurisdiction.
21 And the last one is, and the last -- the actual lease cost of
22 the interconnecting facility.

23 Technically reading the contract we could bill them
24 the dedicated interconnection rate and the actual lease cost or
25 we could bill them our tariff rate and --

1 COMMISSIONER PALECKI: Slow down.

2 THE WITNESS: Okay.

3 COMMISSIONER PALECKI: I read this to say the lesser
4 of. You could choose the least of these three; is that not
5 what the language provides?

6 THE WITNESS: That's not what I'm reading. There's
7 not an "or" in there.

8 COMMISSIONER PALECKI: The CLEC may charge Sprint for
9 proportionate amount based on relative usage using the lesser
10 of, and then they give three. You're saying that you can
11 combine those three or it's you choose the least one?

12 THE WITNESS: My interpretation, it says you can
13 combine 2.2.3.1 with the 2.2.3.3. Another option would be
14 2.2.3.2 and 2.2.3.3.

15 COMMISSIONER PALECKI: Is this the crux of the
16 disagreement over this interpretation of this, of this
17 provision of the interconnection agreement? I would like to
18 ask counsel is this what we're, you know, in a nutshell what
19 we're arguing about here?

20 MR. DODGE: The parties have made this the crux of
21 this particular dispute, yes, whether the contract should be
22 read to imply that the final word before 2.2.3.2 has the
23 meaning of an adjunctive or a disjunctive word.

24 COMMISSIONER PALECKI: You know, it would have been
25 nice if you'd have let us know that a lot earlier than now. I

1 mean --

2 MR. DODGE: It was contained in our complaint, Your
3 Honor, and I believe Sprint has addressed it in their response
4 in their rebuttal testimony.

5 COMMISSIONER PALECKI: Thank you.

6 COMMISSIONER BAEZ: Commissioner Bradley, you had a
7 question?

8 COMMISSIONER BRADLEY: Yes. And I want someone to
9 correct me if I'm getting out of line here as it relates to
10 this question, and this may or may not be appropriate. But
11 Time Warner, what is your -- do you have, do you have an
12 interconnection agreement with Time Warner?

13 THE WITNESS: No, sir. We just lease capacity from
14 Time Warner.

15 COMMISSIONER BRADLEY: Is that the standard in the
16 industry to not have --

17 THE WITNESS: Yes, sir. Like I say, we're doing the
18 same thing for BellSouth from their Colonial tandem down to our
19 Maitland switch.

20 COMMISSIONER BRADLEY: So your lease with Time Warner
21 would be not considered as an interconnection agreement, I
22 mean, an interconnection activity?

23 THE WITNESS: No, sir. It's a contract that we have
24 with them to purchase facility.

25 COMMISSIONER BRADLEY: Okay.

1 COMMISSIONER BAEZ: Ms. Masterton.

2 BY MS. MASTERTON:

3 Q Okay. Yeah. I wanted to get back to something you
4 said about interconnection facility. And I understood you to
5 say that the DS-3s that you're leasing from Time Warner you're
6 considering to be the interconnection facility; is that
7 correct?

8 A Yes, ma'am.

9 Q What are the transport facilities that ALEC is
10 providing to transport the traffic from the POI in Winter Park
11 to ALEC's switch in Maitland?

12 A We're not providing any transport for that.

13 Q So you're not providing any transport facilities?

14 A No. Those -- the DS-3s that you -- excuse me. The
15 DS-1s that you order are put on the DS-3 that we provide.

16 Q So just to make sure I'm clear, Time Warner -- I
17 mean, ALEC is not providing any DS-1 or DS-0 facilities; is
18 that correct?

19 A No, ma'am.

20 Q I thought you just said you're not providing any
21 facilities. Did I misunderstand you?

22 A Maybe I misunderstood what you asked me. I'm sorry.

23 Q I said, does ALEC provide the DS-1 and the DS-0
24 facilities?

25 A You ordered DS-1s and DS-0s from us and we put them

1 on that DS-3 through the multiplexing arrangement.

2 Q So does ALEC provide any facilities to Sprint other
3 than the DS-3s that it leases from Time Warner?

4 A Technically those DS-1s and the DS-0s are facilities.

5 Q And does Time Warner provide those facilities?

6 A They're riding on the facility that Time Warner
7 provides.

8 Q But just answer it yes or no. Is Time Warner
9 providing DS-1 or DS-0 facilities?

10 A No.

11 Q Thank you. I wanted to also explore for this DS-3
12 facility, what are the end points of that interconnection
13 facility? In other words, where does it begin and where does
14 it end?

15 A It begins at the POI or the Time Warner, I believe,
16 collocation in your building, subject to check, over to our
17 switch, terminates on our switch in Maitland.

18 Q And what would ALEC consider to be the end points of
19 the transport that it's billing Sprint for?

20 A The transport? The transport would be from maybe one
21 of your end offices out there. If you're talking about 2.2.3,
22 that's the trunking that would come from one of your end
23 offices, Winter Garden, I don't know all of them, over to our
24 Maitland switch if we have direct trunking. If there's not
25 enough traffic then, it would come from your tandem Winter Park

1 over to our switch.

2 Q So you're saying that the transport that ALEC is
3 billing Sprint is not, not based on originating or on being
4 interconnected with ALEC at the POI in Winter Park and then
5 transported to the switch in Maitland, you're saying it's
6 something else?

7 A Please ask me that again. I'm --

8 Q You're saying the end point, the POI in Winter
9 Park -- where does, where does ALEC interconnect with Sprint?
10 I guess I should ask that.

11 A At the Sprint tandem. We have a point of interface
12 there.

13 Q So the transport that ALEC is billing Sprint for --

14 A Again --

15 Q -- what is the originating point of that?

16 A It would depend on where that trunk, where Sprint
17 ordered the trunk. If they ordered 24 trunks from one of your
18 end offices to our switch, that's the beginning and the end
19 point. If, if it was behind, if it was a small office that had
20 very little traffic, then we would not have a direct trunk but
21 it would be tandem switched through your tandem, handed off on,
22 on those DS-1s that we multiplex up and go over to our switch.

23 Q So you're saying then that Sprint interconnects with
24 ALEC at other points besides the POI in Winter Park?

25 A The part that we provide, it comes from your end

1 offices and gets put on that multiplexing equipment, the POI
2 there in your tandem, and sent over to our switch. But there's
3 direct trunks and there's also tandem trunking.

4 Q So you're saying that the transport portion that
5 Sprint, that ALEC is billing Sprint is from the POI in Winter
6 Park to the switch in Maitland; is that correct?

7 A Yes, ma'am. Per the contract, the POI determines the
8 point of which the originating carrier shall pay the
9 terminating carrier for the completion of that traffic, and
10 that's transport.

11 Q So then the end points of that transport are the
12 Winter Park, the POI in Winter Park and the switch in Maitland;
13 is that correct?

14 A From a billing perspective, I would say that is
15 correct.

16 Q Okay. Thank you.

17 What if the transport that ALEC was providing to
18 Sprint was over a single DS-1 instead of a DS-3, just as a,
19 just postulating that, what would be the interconnection
20 facility in that case?

21 A If everything were riding separate DS-1s?

22 Q Yes.

23 A Is that what you're asking me?

24 Q Yes.

25 A Well, you'd have to have some type of medium, either

1 a cable pair or whatever, to, for the four pairs associated
2 with each DS-1 going across from the point of interface over to
3 our switch. At that point we would have to have multiplexing
4 on that end to get it up to the level that our switch needs.

5 Q So in that case the interconnection facility would
6 be -- I didn't understand that what you were saying.

7 A It would be each individual DS-1.

8 Q And what would be the transport facilities in that
9 situation?

10 A For the call transport and termination it would still
11 be the DS-1s.

12 Q So in that case you're saying the DS-1 would be both
13 the interconnection facility and the transport facility; is
14 that correct?

15 A If, if that's the way it were routed, yes, ma'am.
16 But there would be a large cable payer to, or some type of
17 transmission medium to get each one of those DS-1s from your
18 point to, to our switch; whereas, with fiber everything rides
19 on a pair of fibers. It's multiplexed up, goes across that
20 way.

21 Q So but I, I didn't get your answer to the question,
22 would the interconnection facility be both -- would the
23 interconnection facility and the transport facility be the same
24 in that situation? Yes or no.

25 A It appears, yes, it would.

1 Q Thank you.

2 COMMISSIONER BAEZ: Ms. Masterton, Commissioner
3 Bradley had a question.

4 MS. MASTERTON: Oh, I'm sorry.

5 COMMISSIONER BRADLEY: Yes. I -- maybe I need to
6 restate my question a little bit clearer.

7 Does ALEC have a written lease agreement with Time
8 Warner?

9 THE WITNESS: If I understand your question, do we
10 have a lease agreement with Time Warner?

11 COMMISSIONER BRADLEY: A written lease agreement.

12 THE WITNESS: Yes.

13 COMMISSIONER BRADLEY: And you have -- it's obvious
14 that you have a written lease, a written interconnection
15 agreement with Sprint.

16 THE WITNESS: Yes, sir.

17 COMMISSIONER BRADLEY: What, what does your lease
18 agreement with Time Warner reflect in terms of what your
19 interconnection agreement is with, with Sprint? Are the two
20 synonymous, are the terms pretty much synonymous in terms of
21 2.2.3?

22 THE WITNESS: I'm not sure if I totally understand
23 what you're asking me.

24 COMMISSIONER BRADLEY: Okay. In your lease
25 agreement -- I'm assuming that you have, that a portion of your

1 lease agreement deals with Section 2.2.3.

2 THE WITNESS: Yes, sir. That is the section that we
3 are leasing, the 2.2.3. That is from the point of interface
4 over to our switch.

5 COMMISSIONER BRADLEY: Okay. Is, is your lease
6 agreement with Time Warner, does it reflect what your
7 interconnection agreement is with Sprint? Is it synonymous or
8 is it the same or is it different?

9 THE WITNESS: It says if we provide 100 percent of
10 those facilities, then we can be compensated for that.

11 COMMISSIONER BRADLEY: Okay. That's the
12 interconnection agreement.

13 THE WITNESS: Right.

14 COMMISSIONER BRADLEY: Okay. Now what, what does
15 your lease agreement with Time Warner reflect as it relates to
16 this particular section of your interconnection agreement?

17 THE WITNESS: I don't know that there's any relation
18 between the two. It just says we will provide a DS-3 from
19 Point A, which is the POI, over to Maitland switch, our central
20 office.

21 And I might add, as I was mentioning it in my summary
22 testimony, there's really three pieces to that. There is the
23 Winter Park to Maitland, and it would probably, in this case
24 would go to the Sprint central office; and then you have local
25 loops on, on each end or local channels; entrance facilities.

1 The industry has numerous names for those. But we're leasing
2 that entire piece from, from Time Warner.

3 And I believe in the contract when it says, you know,
4 DS-3, that is just the interoffice facility. I don't believe
5 it includes the local loop. That's subject to check. I would
6 have to find out.

7 COMMISSIONER BRADLEY: Well, could you provide us
8 with that information or is that inappropriate?

9 COMMISSIONER BAEZ: If you want it provided, exactly
10 what is it that you want? Can you clarify for me?

11 COMMISSIONER BRADLEY: Well, I'm, I'm just curious as
12 to how the verbiage in the lease agreement correlates with the
13 verbiage in the interconnection agreement as it relates to this
14 particular section.

15 COMMISSIONER BAEZ: Well, Commissioner, if I can, and
16 maybe counsel can stop me at the moment that I'm wrong, but
17 the, the, the only relationship that a lease agreement between
18 Time Warner and, and ALEC would have to this interconnection
19 agreement is merely what's stated in this agreement. There
20 would be no -- there probably isn't a necessity to reference
21 the interconnection agreement as, as to the relationship
22 between Time Warner and, and ALEC for the lease of those
23 facilities. The only relationship comes in in what use they
24 make of those facilities in terms of this contract. So you
25 wouldn't normally expect there to be any reference in the lease

1 agreement as, as you've identified. So if --

2 COMMISSIONER BRADLEY: So the two are not relative?

3 COMMISSIONER BAEZ: Not, not on its face.

4 COMMISSIONER BRADLEY: Okay.

5 COMMISSIONER BAEZ: Let's -- they don't, they don't
6 normally reference each other. I mean, if anybody has --

7 MR. DODGE: Your Honor, if I may, I think that's
8 exactly right. We have not been asked by Sprint to provide
9 that contract, as I recall, in the discovery.

10 MS. MASTERTON: That's correct. That's correct.

11 MR. DODGE: We're delighted to make it a late-filed
12 exhibit. There may be some portions that have to be offered
13 under seal or we may have to redact some. But we're happy to
14 have it before you.

15 But I think your characterization is correct that we
16 simply have a stand-alone contract with Time Warner to provide
17 us facilities and services, some of which, in turn, we use to
18 meet our obligations to Sprint under the interconnection
19 agreement.

20 COMMISSIONER BAEZ: And others as well.

21 MR. DODGE: And similarly BellSouth, and there may be
22 other carriers as well.

23 COMMISSIONER BAEZ: Commissioner Bradley, do you
24 still have an interest in the lease agreement?

25 COMMISSIONER BRADLEY: Well, if it's a standalone,

1 that means that --

2 COMMISSIONER BAEZ: It's probably.

3 COMMISSIONER BRADLEY: -- it's not relative. But
4 it's a factor and I understand, so, no.

5 COMMISSIONER BAEZ: You don't, you won't be needing
6 --

7 COMMISSIONER BRADLEY: No. No.

8 COMMISSIONER BAEZ: Okay. Thank you. Is that -- are
9 you done?

10 COMMISSIONER BRADLEY: Yeah.

11 COMMISSIONER PALECKI: Let me make, ask one question
12 of Mr. McDaniel.

13 COMMISSIONER BAEZ: Sure, Commissioner.

14 COMMISSIONER PALECKI: If you could turn to Page
15 44 of the interconnection agreement, which is Exhibit 2. It's
16 the portion we looked at before that has the reciprocal
17 compensation for DS-3.

18 Would you agree that this particular charge that's
19 reflected on Page 44 is Sprint's dedicated interconnection
20 rate?

21 THE WITNESS: You're talking the nonrecurring charge?

22 COMMISSIONER PALECKI: Well, there's two charges.
23 One is a nonrecurring charge that's \$86.28, and the other one
24 is a recurring rate that says "rate varies." And that was my
25 second question. What does that mean, rate varies? Do you

1 have a recurring rate?

2 THE WITNESS: It depends on, it depends on where the
3 two points are. To me this, this is the interoffice facility,
4 as I was describing, from one switch, one Sprint switch office
5 to another Sprint switch office. That's what that would be.

6 And if you go to, over several pages, starting on, I
7 think, Page 47 -- no, excuse me. That's the local loop. Let
8 me find the right -- there is a transport section in here.

9 COMMISSIONER BAEZ: Mr. McDaniel, just to save some
10 time, is, is, is the point that you're trying to make that it
11 may be mileage sensitive or, or something of that sort or --

12 THE WITNESS: These -- I assume that it probably --

13 COMMISSIONER BAEZ: How would it carry, I guess, in
14 answer to that question?

15 MS. MASTERTON: I just wanted to, I was going to ask
16 Mr. McDaniel some questions where we would actually look in the
17 agreement for the rate that is that rate that varies.

18 COMMISSIONER BAEZ: Commissioner, are you willing to
19 hold off and wait, wait on that answer?

20 COMMISSIONER PALECKI: I'm willing to wait.

21 COMMISSIONER BAEZ: Thank you, sir.

22 Ms. Masterton -- Ms. Masterton, just quickly, how
23 much, how much more cross do you have, rough estimate? Is it
24 quite a bit?

25 MS. MASTERTON: Yeah. I mean, I have quite a bit

1 more. I'd say an hour to an hour and a half probably.

2 COMMISSIONER BAEZ: Okay. Just, just as, for
3 information everybody, I think we're going to try and break at
4 noon for a lunch hour and then we'll convene again at 1:00 and
5 whatever you have left. Okay? Thank you.

6 BY MS. MASTERTON:

7 Q I guess I'll get right to it because I think that was
8 my next series of questions.

9 Mr. McDaniel, I wanted to look at the agreement, I
10 guess, where we were on Page 44 and ask, you know, what are the
11 rates for dedicated transport at the DS-1 level pursuant to the
12 agreement?

13 A For DS-1?

14 Q Yes.

15 A Pursuant to the agreement, is that what you're
16 saying?

17 Q Yes. Yes.

18 A From Winter Park to Maitland it's 71 -- let me make
19 sure. \$71.95, I'm pretty sure, but let me make sure.

20 COMMISSIONER BRADLEY: Which page are we on?

21 THE WITNESS: I'm getting there. I'm on Page 71.

22 BY MS. MASTERTON:

23 Q Right. I think you need to refer to Page 71 of the
24 interconnection agreement. It's a table of rates that's
25 attached to the interconnection agreement. Is that what you're

1 referring to, Mr. McDaniel?

2 A Yes, ma'am.

3 Q And what is that rate for the Winter Park to Maitland
4 route?

5 A For the DS-1?

6 Q Yes.

7 A \$71.95.

8 MS. MASTERTON: And this is alphabetical.

9 Commissioners, just to help you find it, it starts on Maitland
10 and then you look down to W where it says "Winter Park."

11 BY MS. MASTERTON:

12 Q And then going back to Page 44 of the agreement, what
13 is the nonrecurring rate associated with DS-1, dedicated DS-1
14 transport in the agreement?

15 A \$79.80.

16 Q And what is ALEC billing Sprint for the recurring
17 rate for DS-1s?

18 A \$71.95.

19 Q So ALEC is billing Sprint the rate from the
20 agreement; is that correct?

21 A That's correct.

22 Q Okay. And what is, what is ALEC billing Sprint for
23 the nonrecurring charge for the DS-1s?

24 A Our tariff rate, which is \$866 and some pennies for
25 the first DS-1, and then \$486, I believe, for each additional

1 DS-1.

2 Q So ALEC is using Sprint's rates for the recurring
3 charge but ALEC's rates for the nonrecurring charge; is that
4 correct?

5 A That's correct. We had no rate for the DS-0, so we
6 used, to be consistent, we used for nonrecurring all the ALEC
7 tariff rates, DS-3, DS-1, DS-0.

8 Q So even though the rate in the agreement is, is less
9 than the rate in ALEC's price list, ALEC chose to charge Sprint
10 the rate in ALEC's price list; is that correct?

11 A Well, again, going back to the interpretation of the
12 contract with the "and," it appears we could charge the lease
13 rate and the contract rate.

14 Q Well, what is the lease rate that ALEC is paying Time
15 Warner for the DS-1s? Could you tell me that?

16 A We're not paying Time Warner for the DS-1. We did
17 not order any.

18 Q So then is that an option under -- even if you were
19 to accept your interpretation, would the lease rate be an
20 option for the DS-1 charges?

21 A No, ma'am.

22 Q So what are the two options that are provided in the
23 agreement for the DS-1 charges?

24 A The contract rate or the tariff rate.

25 Q And does -- do we need to go back and read that

1 introductory clause again where it says "the lesser of"? Do
2 you agree that the contract --

3 A Yes, ma'am.

4 Q -- provides that the rate should be the lesser of
5 Sprint's rate or the --

6 A Yes, ma'am.

7 Q So ALEC chose the price list rate even though it was
8 greater than the interconnection agreement rate; is that
9 correct?

10 A That's correct. To be consistent, since we had no
11 DS-0 rate, we charged a nonrecurring rate at the tariff rate
12 for the DS-0, the DS-1 and the DS-3.

13 Q But you agree that there is a rate in the agreement
14 for the DS-1; is that correct?

15 A Yes, ma'am.

16 Q And you agree that there is a rate in the agreement
17 for the DS-3; is that correct?

18 A Yes, ma'am. But we did not order the DS-3 from you.

19 Q But the agreement says the lesser of Sprint's rate or
20 ALEC's cost as approved by the Commission; is that correct?

21 A And the lease cost. In that case --

22 Q But ALEC is not billing Sprint the rate, the charge
23 that they're being billed by Time Warner for the DS-3s; is that
24 correct?

25 A Ask me the question again.

1 Q Is ALEC billing Sprint what Time Warner is billing
2 ALEC for their nonrecurring charge for DS-3s?

3 A No, ma'am.

4 Q So --

5 A We billed you our tariff rate, which is less than
6 what Time Warner has billed us.

7 Q But it's not less than the rate that's in the
8 agreement; is that correct?

9 A That's correct.

10 Q Okay. Now I wanted to look, I wanted to talk about
11 the charges that ALEC is billing Sprint for the DS-0
12 installation. Can you show me Sprint's rate for DS-0s in the
13 agreement?

14 A There is none.

15 Q So ALEC is not billing Sprint's rate for the DS-0s,
16 is it?

17 A Let me correct that. There is none under reciprocal
18 compensation. There is some under transport, I believe, on
19 Page 43.

20 Q Okay. Let me -- let's get to that page and you can
21 show us what you're referring to.

22 A I'm sorry?

23 Q I said -- can we turn to Page 43 of the agreement so
24 you can tell me what --

25 A Yes, ma'am.

1 Q If I can find my Page 43 because it's getting a
2 little -- what is that rate on Page 43 that you're --

3 A Well, my agreement is \$153.58 for DS-0.

4 Q And what, what is your interpretation of what that
5 rate is for?

6 A A transport of a DS-0.

7 Q And I wanted to look up a little further before Page
8 43 at the, the heading that that, that category falls under.
9 And I think that that, that starts actually on Page 37 of the
10 agreement where it says "rate elements." And then would you
11 agree that the agreement lists several unbundled network
12 elements that can be purchased by an ALEC based on unbundled
13 network element rates?

14 A I'm sorry. You're on what page?

15 Q I started on Page 37 because I think that's where you
16 get the overall heading that applies to that category on Page
17 43, and that is --

18 A The only --

19 Q -- rate element.

20 A To me the only overhead or heading on 37 is in the
21 middle of the page under loop.

22 Q Well, no, I'm looking up higher. There's a, kind of
23 a dark line, it says "rate element." And then under that it
24 starts "service order/installation/repair."

25 MR. DODGE: We may have a different version, Susan,

1 but my --

2 MS. MASTERTON: Maybe I'm on -- I'm sorry. I'm on
3 Page 35. I'm sorry.

4 THE WITNESS: Okay.

5 BY MS. MASTERTON:

6 Q And then under -- there's that one category, and then
7 under that you have several, "service order, tag and label
8 loop, line sharing, loop pre-qualification," it goes on. And I
9 believe that on Page 43 that comes under that heading rate
10 element.

11 MR. DODGE: I'm not sure Mr. McDaniel has found on
12 Page 35 your reference.

13 BY MS. MASTERTON:

14 Q Oh, okay. I'm sorry. Have you found that yet. Mr.
15 McDaniel? Okay.

16 A Yeah. Rate element?

17 Q Do you agree that under that there are several
18 categories starting on Page 35?

19 A Right.

20 Q And I won't list them all. But then you get to Page
21 43 and transport is one of those elements. Do you agree?

22 A Yes, ma'am.

23 Q So would you agree that this rate is the nonrecurring
24 charge associated with the purchase of a DS-0 as an unbundled
25 network element?

1 A Yes, ma'am, it could be.

2 Q And would you agree with me that the rate on Page
3 44 under reciprocal compensation is the rate associated with
4 the provision of transport facilities under reciprocal
5 compensation, for reciprocal compensation purposes?

6 A Yes.

7 Q Okay. So let's get back to, I guess -- is there a
8 rate on Page 44 under the rates associated with reciprocal
9 compensation for DS-0?

10 A No, ma'am. There's not a DS-0 under reciprocal
11 compensation.

12 Q So ALEC is not billing Sprint its rate for DS-0s; is
13 that correct?

14 A I'm sorry?

15 Q So ALEC hasn't chosen the option of billing Sprint
16 its rates for DS-0s; is that correct?

17 A There's no rate.

18 Q All right. So, so you're -- is the rate that ALEC is
19 billing based on the second alternative in the agreement,
20 ALEC's cost as approved by the appropriate state commission?

21 A It's based on our tariff. I believe that's the
22 second, I believe that's the second one in the contract.

23 Q Well, could you read the second one for me, please.
24 And we're on --

25 A If its costs, its own costs if filed and approved --

1 COMMISSIONER BRADLEY: Which page are we on?

2 MS. MASTERTON: We're on Page 119 now.

3 THE WITNESS: I'm sorry. 2.2.3.2?

4 BY MS. MASTERTON:

5 Q Right. Read -- yes. Please read that for me.

6 A Its own costs if filed and approved by a commission
7 of appropriate jurisdiction; and.

8 Q Yes. And ALEC has not filed a cost study for its
9 DS-0 rates with the Commission, has it?

10 A To the best of my knowledge we do not have to file
11 one.

12 Q Well, ALEC is not required to file its price list,
13 its price list with the Commission by the Commission; is that
14 correct?

15 A That's correct.

16 Q But the agreement requires that ALEC file its costs
17 with the Commission; is that correct?

18 A I don't see where it says that we have to file a cost
19 study. Its own costs if filed and approved by the Commission.

20 Q Well, it says it may use those costs, if filed and
21 approved by the Commission; is that correct?

22 A Yes.

23 Q And have ALEC's costs been filed and approved by the
24 Commission?

25 A No.

1 COMMISSIONER PALECKI: Mr. McDaniel, is there any
2 difference between your own cost and the actual lease cost of
3 the facility? I mean, aren't you saying that your own cost is
4 what you are being charged under the lease by AOL?

5 THE WITNESS: Yes, sir. In this case, this is, this
6 is under interconnection compensation, and that is the DS-3.
7 She's talking about DS-0s, and that's, to me, under a different
8 section, 2.3.

9 COMMISSIONER PALECKI: What page is that section?

10 THE WITNESS: That's on Page 120.

11 COMMISSIONER PALECKI: Compensation for local traffic
12 transport and termination?

13 THE WITNESS: Yes, sir. It says --

14 COMMISSIONER PALECKI: Thank you.

15 THE WITNESS: -- the POI determines the point at
16 which the originating carrier shall pay the terminating carrier
17 for the completion of the traffic. The following compensation
18 shall apply: The transport, which is what we're talking about,
19 and transport is made up of a recurring and nonrecurring
20 charge.

21 COMMISSIONER PALECKI: So you're saying for the DS-0
22 the 2.2.3 does not apply. Rather, Section 2.3, compensation
23 for local traffic, applies?

24 THE WITNESS: Yes, sir.

25 COMMISSIONER PALECKI: Thank you.

1 BY MS. MASTERTON:

2 Q And following up on that, Mr. McDaniel, what rates
3 apply to 2.3 under the agreement?

4 A I don't see any rates specified under 2.3. Let me
5 look to make sure. I don't see any rates under 2.3.

6 Q But the parties have agreed that the rates in Table
7 1 are the rates that are applicable to the performance of
8 services under the agreement; correct?

9 A Yes.

10 Q So would you agree that the rates on Page 44 for
11 transport and termination would be the correct rates to apply
12 under 2.3?

13 A For DS-1, but not -- there's no DS-0 rate. So Part
14 B, Section 1.4, says if there is a conflict between the
15 agreement and the tariff, then the tariff would control.

16 Q Let's just stop for a minute and go back to that.
17 It's, I think, on Page 14, Part B.

18 COMMISSIONER BRADLEY: Where is that located in the
19 agreement?

20 MS. MASTERTON: On Page 14 of the agreement, it's in
21 Part B, General Terms and Conditions. It's Page 14.

22 BY MS. MASTERTON:

23 Q And would you read that for me, Mr. McDaniel?

24 A Yes, ma'am. The services and facilities to be
25 provided to CLEC by Sprint in satisfaction of this agreement

1 may be provided pursuant to Sprint's tariffs and then current
2 practices. Should there be a conflict between the terms of the
3 agreement and any such tariffs and practices, the terms of the
4 tariff shall control to the extent allowed by law or Commission
5 order.

6 Q So this provision doesn't say anything about the
7 ALEC's tariffs or price list, does it?

8 A No, ma'am, it does not specify ALEC.

9 Q Okay. Thank you. I wanted to now turn to -- I
10 wanted to hand out a copy -- I wanted to talk about Rule
11 Fifty -- I'm going to talk about Rule 51.711, and I have copies
12 of it to make available to you, if you'd like it. It's FCC
13 Rule 51.711. I was not going to move this as an exhibit
14 because it's my understanding this is available under official
15 recognition, but I will distribute copies.

16 COMMISSIONER BAEZ: That's correct.

17 BY MS. MASTERTON:

18 Q Okay. Have you had a chance to look at it,
19 Mr. McDaniel?

20 A Yes, ma'am.

21 Q And do you agree that Paragraph A of the rule
22 generally requires that the rates for transport and termination
23 must be symmetrical?

24 A That's what this says. Yes, ma'am.

25 Q And the rule defines symmetrical to be based on the

1 incumbent LEC's rates; is that correct?

2 MR. MOYLE: Just let me register an objection.

3 Obviously he's not a lawyer, and to the extent these questions
4 call for legal conclusions, we would object. If she's asking
5 him for his understanding as somebody who's familiar with rules
6 and regulations, then that's fine. But I don't -- I'm nervous
7 about these legal conclusion questions that are being asked.

8 MS. MASTERTON: Okay.

9 COMMISSIONER BAEZ: Ms. Masterton, we'll acknowledge,
10 and if Mr. McDaniel will remind counsel whenever he feels
11 appropriate, that he is not an attorney and we'll guard against
12 your, your concerns that way. And if you can phrase your
13 questions in a way that elicit his interpretation of it as a
14 layman.

15 MS. MASTERTON: Okay. I'll try to do that. As the
16 Commissioner said, if I go over, just --

17 COMMISSIONER BAEZ: We'll have that understanding
18 anyway.

19 MS. MASTERTON: Right. But I will try to do it.

20 BY MS. MASTERTON:

21 Q And that is the understanding and that was why I
22 think I initially asked you that question about your duties and
23 whether it involved some familiarity with the rules and
24 regulations.

25 So I guess would you just read, I guess, under A,

1 Subsection 1?

2 A For the purpose of this subpart, symmetrical rates
3 are rates that a carrier other than an incumbent LEC assesses
4 upon an incumbent LEC for transport and termination of
5 telecommunications traffic equal to those that the incumbent
6 LEC assesses upon other carriers for the same services.

7 Q So is it your understanding that that means that
8 symmetrical rates are the incumbent LEC rates? Is it your
9 understanding as a layperson that what you just read means that
10 the symmetrical rates are based on the incumbent LEC's rates?

11 A Symmetrical would be the same.

12 Q Now on Paragraph B of the rule it states an exception
13 to the use of the incumbent LEC's rates. Is that your
14 understanding in reading this?

15 A Yes, ma'am.

16 Q And could you just read for me paragraph, or I don't
17 know, Paragraph B. I'll call it paragraph.

18 A B?

19 Q Yes.

20 A A state commission may establish asymmetrical rates
21 for transport and termination of telecommunications traffic
22 only if the carrier other than the incumbent LEC, parentheses,
23 or the smaller of two incumbent LECs proves that the state
24 commission -- proves to the state commission on the basis of a
25 cost study using the forward-looking economic cost-based

1 pricing methodology described in Sections 51.505 and 51.511,
2 that the forward-looking costs for a network efficiently
3 configured and operated by the carrier other than the incumbent
4 LEC or smaller, parentheses, or smaller of the two incumbent
5 LECs, exceeds the costs incurred by the incumbent LEC, or the
6 larger incumbent LEC and, consequently, that such a higher rate
7 is justified.

8 Q Thank you. So for establishing costs, the rule
9 requires the ALEC to use forward-looking economic costs using
10 the pricing methodologies established in the rule cited here.
11 Is that, is that your understanding?

12 A Ask the question again.

13 Q What you just read for Paragraph B, it requires that
14 in establishing its costs an ALEC has, is required to use
15 forward-looking economic costs and it's based on pricing
16 described in, in two cited FCC rules. Is that what you
17 understand?

18 MR. DODGE: Your Honor, at this point we would object
19 to that question. I think it very clearly calls for a legal
20 conclusion.

21 COMMISSIONER BAEZ: Ms. Masterton?

22 BY MS. MASTERTON:

23 Q Let me rephrase it in a way that perhaps -- does the
24 rule say that the basis of the cost study is the
25 forward-looking economic cost-based pricing methodology

1 described in Sections 51.505 and 51.511?

2 A My, my interpretation, my layman's interpretation,
3 nonlegal, it says a state commission may establish based on
4 forward-looking.

5 Q But you're agreeing the language I read is correctly
6 read from the rule, that the cost must be based on the
7 forward-looking economic cost-based pricing methodology
8 described in Sections 51.505 and 51.511, does that correctly
9 state the rule?

10 A That's what it says. Yes, ma'am.

11 Q Okay. Thank you. And I wanted now to -- I'm going
12 to hand out a copy of 51.505.

13 And, Mr. McDaniel, could you tell me what the heading
14 is for Rule 51.505 where it says "Section 51.505," and then
15 there's some words, would you read those for us?

16 A Forward-looking economic cost.

17 Q And is it your understanding in your role as the
18 carrier relations manager, and in that role I understand you
19 have some regulatory responsibilities, that forward-looking
20 economic costs are commonly referred to as TELRIC?

21 A Yes.

22 Q And I want you to go down and there's a definition of
23 TELRIC in this rule, it's in Paragraph B, and read the
24 definition of that for me.

25 A Paragraph B, total element long-run incremental cost.

1 The total element long-run incremental cost of an element is
2 the forward-looking cost over the long run of the total
3 quantity of the facilities and functions that are directly
4 attributed to, or reasonably identifiable as incremental to,
5 such element, calculated taking as a given the incumbent LEC's
6 provision of other elements.

7 Q Okay. Thank you. Now in your direct testimony --
8 we're going to skip from this and go to your direct testimony
9 on Page 13, Line 10. And on there you state that ALEC's
10 tariffed rates are based on BellSouth's intrastate access
11 tariffed rates; correct?

12 A Yes.

13 Q Are BellSouth's intrastate access rates based on
14 TELRIC cost studies?

15 A I do not know.

16 Q Okay. Well, to kind of help you with that, I'm going
17 to, I'm going to pass out a Commission order. It's one that
18 was referred to in a letter that I received from ALEC yesterday
19 as the appropriate order that reflects the approval of those,
20 those rates for BellSouth. And, once again, since this is a
21 Commission order, I was not going to have it entered as an
22 exhibit, but --

23 COMMISSIONER BAEZ: We're slowly getting over that.

24 MS. MASTERTON: Okay. Yeah. I know. I just wanted
25 to make sure it was okay.

1 COMMISSIONER BAEZ: It's hard to let go. Thank you.

2 BY MS. MASTERTON:

3 Q Mr. McDaniel, would you agree that this is the order
4 that was represented in that letter that I received yesterday
5 to be the order that approved BellSouth's intrastate access
6 tariffed rates?

7 MR. MOYLE: You know, let me just -- if you, as
8 counsel, want to make that representation, I think I'm fine
9 with it. I'm not sure that he's seen the order before and it's
10 kind of unfair to hit him with that question. But I think if
11 you --

12 COMMISSIONER BAEZ: Perhaps he hasn't even seen the
13 letter. I mean, I'm not sure which letter --

14 MS. MASTERTON: It was a supplement -- I'm sorry. It
15 was a supplement to his interrogatory response, so I assumed
16 that he was aware of it. But --

17 MR. MOYLE: Right. But this is a 15-page order. I
18 think if you just want to make the point that this is an order
19 that the Commission entered that it's entitled --

20 MS. MASTERTON: Well, I have some questions I want to
21 ask him about it.

22 COMMISSIONER PALECKI: Well, Mr. Moyle, would you
23 have any objection if Ms. Masterton just pointed us to the
24 portion of this order that's applicable?

25 MR. MOYLE: No.

1 COMMISSIONER PALECKI: I think we just need to know
2 where we need to look on the order.

3 MS. MASTERTON: Well, I guess that's part of the
4 question, because I was going to ask Mr. McDaniel to show me
5 where in this order TELRIC was mentioned.

6 THE WITNESS: I'll be glad to look through it and see
7 if I can find it.

8 MS. MASTERTON: Okay. Thank you.

9 MR. DODGE: It may make sense, Your Honor, for
10 Mr. McDaniel to review that during the lunch break and hold
11 that question in abeyance.

12 COMMISSIONER BAEZ: We are relatively close.

13 MS. MASTERTON: Okay.

14 COMMISSIONER BAEZ: So if, if it's all right, we'll
15 hold this line of questioning over until after the lunch hour.
16 That will give Mr. McDaniel time to review the document.

17 MS. MASTERTON: That's fine with me.

18 COMMISSIONER PALECKI: Mr. Chair, can I bring up a
19 matter for discussion?

20 COMMISSIONER BAEZ: Yes.

21 COMMISSIONER PALECKI: It seems to me that with the
22 exception of the matter of AOL's misbilling and the confusion
23 as to the dollar amount that AOL was charging to ALEC, that
24 what we have here is a paper hearing. I'm not even sure why we
25 need to hear from witnesses, I'm not sure that this whole thing

1 couldn't be taken care of with just a briefing schedule and
2 some argument of counsel. And it seems like if that's the
3 case, perhaps the attorneys can get together and figure out a
4 more expedited way that we can resolve these matters.

5 I mean, what we're discussing now is not, to me,
6 something that's appropriate for testimony. It's appropriate
7 for argument of counsel. And if this is something you could
8 discuss during the lunch break, I'd appreciate it. Because
9 we're still on our first witness and basically what we're doing
10 is we're really looking at not factual issues but issues of law
11 that can be argued by the attorneys.

12 COMMISSIONER BAEZ: Food for thought.

13 MS. MASTERTON: Yes. Food for thought.

14 COMMISSIONER BAEZ: We're in recess until 1:00.

15 (Recess taken.)

16 - - - - -

17 (Transcript continues in sequence with Volume 2.)
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25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, LINDA BOLES, RPR, Official Commission
6 Reporter, do hereby certify that the foregoing proceeding was
heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
transcribed under my direct supervision; and that this
9 transcript constitutes a true transcription of my notes of said
proceedings.

10 I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a relative
or employee of any of the parties' attorneys or counsel
12 connected with the action, nor am I financially interested in
the action.

13 DATED THIS 21ST DAY OF AUGUST, 2002.

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