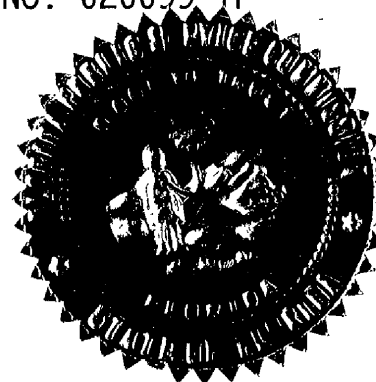


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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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PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER BRAULIO L. BAEZ  
Prehearing Officer

DATE: Monday, July 22, 2002

TIME: Commenced at 1:32 p.m.  
Concluded at 1:45 p.m.

PLACE: Betty Easley Conference Center  
Room 152  
4075 Esplanade Way  
Tallahassee, Florida

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

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## 1 APPEARANCES:

2 SUSAN S. MASTERTON, Sprint-Florida, Post Office Box  
3 2214, Tallahassee, Florida 32316, appearing on behalf of  
4 Sprint-Florida, Incorporated.

5 JON C. MOYLE, JR., Moyle, Flanigan, Katz, Raymond &  
6 Sheehan, P.A., 118 North Gadsden Street, Tallahassee, Florida  
7 32301, appearing on behalf of ALEC, Inc.

8 JOHN C. DODGE, Cole, Raywid & Braverman, L.L.P., 1919  
9 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006,  
10 appearing telephonically on behalf of ALEC, Inc.

11 LINDA H. DODSON and WAYNE D. KNIGHT, Florida Public  
12 Service Commission, Office of the General Counsel, 2540 Shumard  
13 Oak Boulevard, Tallahassee, Florida 32399-0870, appearing on  
14 behalf of the Commission Staff.

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## P R O C E E D I N G S

COMMISSIONER BAEZ: Call this prehearing to order.  
Counsel, read the notice.

MS. DODSON: Pursuant to notice issued July 8th, 2002, this time and place has been set for a prehearing in Docket Number 020099-TP; Complaint of ALEC, Incorporated, for enforcement of interconnection agreement with Sprint-Florida, Incorporated.

COMMISSIONER BAEZ: We'll take appearances.  
Mr. Moyle.

MR. MOYLE: Thank you. Jon Moyle, Jr., with the Moyle, Flanigan law firm appearing on behalf of ALEC, Inc. With me today by telephone is co-counsel John Dodge with the Cole, Raywid, Braverman firm out of Washington. Also in the audience today is Richard McDaniel and Judy Tinsley of the company.

COMMISSIONER BAEZ: I'm sorry. I wasn't aware there was someone dialing in. Mr. Dodge, can you pick us up all right?

MR. DODGE: I can. Thank you, Your Honor, and thank you for allowing me to join telephonically.

COMMISSIONER BAEZ: Not at all. Welcome.  
Ms. Masterton.

MS. MASTERTON: Susan Masterton on behalf of Sprint.

MS. DODSON: Linda Dodson and Wayne Knight on behalf

1 of the Public Service Commission.

2 COMMISSIONER BAEZ: Okay. And I'm showing a couple  
3 of preliminary matters. A motion for an amended prehearing  
4 statement, and I understand that's unopposed; is that right?

5 MS. MASTERTON: Correct.

6 COMMISSIONER BAEZ: Okay.

7 MR. MOYLE: And just let me bring to your attention,  
8 I've brought it to the other parties' attention as well, I  
9 think the amendment that initially was contemplated is to make  
10 sure that the exhibits are properly identified in the proper  
11 order. It was more administrative.

12 We have a brief clarification statement related to  
13 the position that we'll get to when, I presume when we go  
14 through the order and talk about positions. But also we are  
15 going to file probably a paragraph of, of testimony that would  
16 be corrected testimony, and my thought was, rather than do it  
17 at the hearing when you put the witness up and ask them do they  
18 have any corrections, changes or what not, that it would be  
19 better just to do a notice. We have depositions that will take  
20 place next week and then everybody would be able to look at it  
21 and do it that way.

22 COMMISSIONER BAEZ: Ms. Masterton, as to the rest of  
23 the, as to the rest of the amendment -- I mean, the  
24 housekeeping change is all right. But do you have any --

25 MS. MASTERTON: Right. We don't have any objection

1 to the amendment to the prehearing statement. But Mr. Moyle  
2 had mentioned to me about the testimony, and the only thing I  
3 would say, you know, Sprint doesn't object to them doing it,  
4 without having seen it, that is, except that we would like to  
5 say that if they can file additional testimony, that we would  
6 be given the opportunity to file additional rebuttal testimony,  
7 if we should find that that's necessary.

8 COMMISSIONER BAEZ: I'm sure that you can receive the  
9 same consideration, if you find it necessary.

10 MS. MASTERTON: Okay.

11 COMMISSIONER BAEZ: Counsel, do we need to make any  
12 amendment to the prehearing statement now? I see here that one  
13 of the -- I think the housekeeping change was caught in the  
14 draft; is that right?

15 MS. DODSON: The --

16 COMMISSIONER BAEZ: The exhibit list, I think the  
17 amendments to the exhibit list are reflected in this draft.

18 MS. DODSON: Yes.

19 COMMISSIONER BAEZ: Okay. And then we'll grant the  
20 motion to amend the prehearing statements and the position, and  
21 what, I think what you can do is forward it to both counsel, to  
22 all the counsels --

23 MR. MOYLE: Okay.

24 COMMISSIONER BAEZ: -- off-line.

25 Okay. And then we've got Sprint's notice of

1 substitution of witness. And that's reflected in the  
2 prehearing statement as well -- the prehearing order. I'm  
3 sorry.

4 MS. DODSON: Yes. Yes.

5 COMMISSIONER BAEZ: All right. And -- I'm sorry.

6 MS. DODSON: I'm sorry. Go ahead.

7 COMMISSIONER BAEZ: You were going to say something?

8 MS. DODSON: No. Okay.

9 COMMISSIONER BAEZ: Are you sure?

10 MS. DODSON: No. I'll wait.

11 COMMISSIONER BAEZ: Okay. Speak now.

12 MS. DODSON: Yeah, it's coming.

13 COMMISSIONER BAEZ: And I'm showing a stipulation  
14 agreement as to Issue 3.

15 MR. MOYLE: That's right.

16 COMMISSIONER BAEZ: Do we need to go over anything?  
17 Is everyone in agreement with it, Staff as well?

18 MS. DODSON: I think everyone, all parties are in  
19 agreement.

20 COMMISSIONER BAEZ: Okay. We'll accept the  
21 stipulation. Let it be reflected in the --

22 MS. MASTERTON: Could I just wait a minute, because I  
23 haven't seen what was actually put into writing on that yet.

24 COMMISSIONER BAEZ: Oh, you haven't?

25 MS. MASTERTON: No.

1 COMMISSIONER BAEZ: Oh, I'm sorry. Is there anything  
2 that we can pass around then?

3 MS. DODSON: I have not put anything into writing.  
4 It is not in the revised draft prehearing order.

5 COMMISSIONER BAEZ: It's not in the revised draft  
6 prehearing order?

7 MR. DODGE: Your Honor, this is John Dodge. Perhaps  
8 a bit of explanation is due to clarify that I don't think  
9 anything is needed in writing. We had held this position open  
10 pending both parties going back and checking their records and  
11 checking with their experts to see if minute-of-use charges  
12 were in dispute in this case in this state by at least informal  
13 agreement, and I think that was communicated to Staff some time  
14 ago. Parties did go back and check and say, no, minute-of-use  
15 charges are not in dispute, so the issue does not need to be  
16 litigated. And Susan may have a slightly different take on  
17 that, but I think that's where we come out.

18 MS. MASTERTON: No. I mean, I agree. I just had  
19 understood -- you said a stipulation. I thought there might be  
20 something in writing and I just wanted to make sure. Yeah.

21 COMMISSIONER BAEZ: I'm showing there's an agreement  
22 to stipulate. Now I don't have any -- I don't have a problem  
23 with it just being, having the issue withdrawn and not just  
24 thrown out.

25 MS. MASTERTON: Yeah. I think we would prefer that,

1 Sprint would prefer. I had just wanted to see anything that  
2 was in writing. But if there isn't --

3 COMMISSIONER BAEZ: Not a problem.

4 MR. DODGE: We're not going to show you what we have,  
5 Susan. Sorry.

6 COMMISSIONER BAEZ: So we'll show Issue 3 -- what's  
7 the proper term here? Is that withdrawn or --

8 MS. DODSON: Withdrawn.

9 MR. DODGE: I think withdrawn is more accurate.

10 COMMISSIONER BAEZ: All right. We'll keep the order  
11 of issues just for simplicity's sake, but we'll show Issue  
12 3 withdrawn.

13 MS. DODSON: I believe there's one -- am I on?

14 COMMISSIONER BAEZ: I can hear you.

15 MS. DODSON: Okay. I believe there is, there is --  
16 ALEC has put forward a notice of change in witness testimony;  
17 is that -- do I have that correct?

18 MR. MOYLE: Well, I think Sprint has changed  
19 witnesses, and we had a change where I was just giving notice  
20 that we are going to be correcting and filing a supplement to  
21 just a small piece of testimony that will be done probably  
22 tomorrow through notice.

23 COMMISSIONER BAEZ: In accordance -- in corresponding  
24 testimony to the prehearing statement.

25 MR. MOYLE: Statement. Correct.



1 COMMISSIONER BAEZ: Okay.

2 MR. MOYLE: And we understand that to the extent that  
3 there's something that needs rebuttal, that we'll work it out  
4 and give them an opportunity to rebut, if it's something that  
5 they view as material.

6 COMMISSIONER BAEZ: All right. Is that it for the  
7 preliminaries?

8 MS. DODSON: Yes.

9 COMMISSIONER BAEZ: Okay. Now we'll move on to  
10 review the draft order.

11 Ms. Dodson, is everyone in agreement with having  
12 direct and rebuttal combined?

13 MR. DODGE: ALEC agrees, Your Honor.

14 MS. MASTERTON: Sprint agrees.

15 COMMISSIONER BAEZ: Sprint agrees? Okay. Is that  
16 reflected in the draft right now? If it isn't, just make it,  
17 let the prehearing order --

18 MS. DODSON: Okay. I will make sure.

19 COMMISSIONER BAEZ: -- the final order show that  
20 direct and rebuttal is going to be combined. And I also  
21 believe there's the question of opening statements. And did  
22 the parties have any --

23 MR. MOYLE: I think we'd probably like to preserve  
24 the right to make a brief opening statement, not likely to  
25 exceed more than five minutes.

1 COMMISSIONER BAEZ: Okay.

2 MS. MASTERTON: Yeah. I think right now the order  
3 says ten. Sprint would be agreeable to five as well, if that's  
4 what you're proposing. I mean, we'd be agreeable to reducing  
5 it to five minutes.

6 COMMISSIONER BAEZ: Mr. Moyle, the ball is in your  
7 court. I don't have a problem --

8 MR. MOYLE: Yeah. Mr. Dodge, I haven't had the  
9 pleasure of litigating with you, but I don't perceive you to be  
10 needing much more than five, if we decide to make a brief  
11 opening statement.

12 MR. DODGE: I cannot imagine, even given my  
13 loquaciousness, that I will exceed five minutes.

14 COMMISSIONER BAEZ: We're not getting paid by the  
15 hour, are we?

16 MR. DODGE: No comment, Your Honor.

17 COMMISSIONER BAEZ: Then let's go ahead and show  
18 revision to the order and have five minutes per side.

19 MS. DODSON: I'll make that revision.

20 COMMISSIONER BAEZ: Okay. And we'll go wholesale  
21 sections Roman I through Roman -- I'm sorry -- through Roman  
22 IV. Do any of the parties have any comments or changes they'd  
23 like to propose outside of those that have already been  
24 discussed?

25 MR. MOYLE: No, Your Honor.

1 COMMISSIONER BAEZ: Ms. Masterton, are you all right?

2 MS. MASTERTON: No, I'm fine. Maybe we can take  
3 silence as consent in this case.

4 COMMISSIONER BAEZ: That'll be fine. I just don't  
5 want to leave you out. That's all.

6 MS. MASTERTON: No. I appreciate that.

7 COMMISSIONER BAEZ: All right. Roman V.

8 MR. DODGE: Your Honor, this first sentence may need  
9 cross-reference from Ms. Dodson as to our several-word  
10 amendment that we expect to file tomorrow. Other than that, I  
11 think it looks fine.

12 COMMISSIONER BAEZ: I'm sorry. Mr. Dodge, can you  
13 repeat that? I didn't catch the first part.

14 MR. DODGE: Sure. The first sentence of Roman V,  
15 "Testimony of all witnesses," and continuing, it's accurate as  
16 far as it goes. We've had the prior discussion that we will be  
17 filing something perhaps as soon as tomorrow.

18 COMMISSIONER BAEZ: I, I don't see anything limiting  
19 that.

20 MR. DODGE: Okay.

21 COMMISSIONER BAEZ: Ms. Dodson, to the extent that  
22 there is -- I mean, it doesn't seem to. I think we can pretty  
23 much capture whatever changes we need to make.

24 Moving on, Roman VI, order of witnesses, any changes  
25 to the order of witnesses other than the changes of -- I mean,

1 this is already reflecting Mr. Felz, so. No?

2 The basic positions. ALEC?

3 MR. DODGE: We'd like to change some of Sprint's  
4 stuff. But, no, we think it looks fine, Your Honor.

5 COMMISSIONER BAEZ: Unfortunately you don't get that  
6 chance.

7 Okay. Issue 1. And I just have a question for the  
8 parties. I mean, it's my understanding that the Commission has  
9 decided essentially this issue based on state law grounds, and  
10 there doesn't seem to be any disagreement between the parties.  
11 I mean, why are we even dealing with this? And it's just my  
12 stupid question.

13 MS. MASTERTON: I'm not sure I understood what --

14 COMMISSIONER BAEZ: Well, the Commission's  
15 jurisdiction in this matter -- I mean, this has been a  
16 recurring issue in most of these dockets and I'm -- although I  
17 don't have anything against you raising it again, but if the  
18 result is going to be the same, I mean, can't we, can't we have  
19 spoken already to this issue?

20 MS. MASTERTON: I guess, I mean, from Sprint's  
21 perspective it's important to establish at the outset what is  
22 the jurisdiction that the Commission is operating under  
23 because, you know, there's state law, there's federal law,  
24 there's various decisions out there. So I guess we think that  
25 while, you know, the fundamental issue has been decided, as it

1 applies specifically to this case, you know, there may still  
2 need to be points that need to be addressed.

3 COMMISSIONER BAEZ: Fair enough. Any changes? I'm  
4 sorry, Ms. Dodson, you were going to --

5 MS. DODSON: Staff has a minor correction to Staff's  
6 position on Issue 1.

7 COMMISSIONER BAEZ: Okay.

8 MS. DODSON: Four lines from the bottom, there should  
9 be a closed parentheses at the end of that line after the word  
10 "resolve."

11 COMMISSIONER BAEZ: Okay.

12 MR. MOYLE: Just so I'm clear, it starts where it  
13 says, "finding state commission did not have the jurisdiction  
14 to resolve complaint arising out of interconnection agreement,"  
15 the parentheses should be after "agreement"?

16 MS. DODSON: After "resolve."

17 (Pause.)

18 COMMISSIONER BAEZ: I think it makes more sense if  
19 it's after "agreement."

20 MS. DODSON: After "agreement."

21 COMMISSIONER BAEZ: But I'm not the author, so I  
22 don't have any pride of ownership over it.

23 MS. DODSON: After "agreement."

24 COMMISSIONER BAEZ: After "agreement" it is.

25 Any other changes, Ms. Dodson?

1 MS. DODSON: No.

2 COMMISSIONER BAEZ: That's it? Okay. Issue 2.

3 MR. MOYLE: I think ALEC is okay.

4 MS. MASTERTON: Sprint as well.

5 COMMISSIONER BAEZ: All right. 2A.

6 MR. MOYLE: We're okay there.

7 MS. MASTERTON: I'll just say right now that we don't  
8 have any changes to our statement of the issues.

9 COMMISSIONER BAEZ: You don't have any changes?  
10 Great. We'll get you out of the way quick then. 2B.

11 MR. MOYLE: 2B is where we would have the change.  
12 And maybe, since Staff has the document, if I could just read  
13 it into the record. It's pretty brief.

14 COMMISSIONER BAEZ: If you have it, if you've got it  
15 ready, you can go ahead and read it into the record.

16 MR. MOYLE: All right. Under positions, the last  
17 line on the page, it says, "For recurring charges." After  
18 "charges" we would insert "for DS3 facilities, comma," and then  
19 it goes on, "ALEC has charged Sprint."

20 COMMISSIONER BAEZ: Can you repeat that for me? I'm  
21 sorry, Mr. Moyle.

22 MR. MOYLE: Sure. The very last line under Issue 2B  
23 positions, it says, "For recurring charges." After the word  
24 "charges" we would insert "for DS3 facilities, comma."

25 COMMISSIONER BAEZ: DS3?

1 MR. MOYLE: Right. D as in David, S as in Sam --  
2 facilities, and the sentence continues on. "ALEC has charged  
3 Sprint the cost it paid for these facilities to the lessor  
4 third party Time Warner, period."

5 The next insertion is one sentence, which says, "For  
6 recurring DS1 charges, ALEC has charged Sprint the agreement  
7 rate, period."

8 I think that should do it. I'll double-check with  
9 the client afterwards, and if there is anything additional,  
10 I'll get with Staff.

11 COMMISSIONER BAEZ: If there are any additional  
12 changes, you can make them known to Staff.

13 MR. MOYLE: But that would, that would be it as far  
14 as we have with respect to position issues.

15 COMMISSIONER BAEZ: Great. Thank you. Issue 4,  
16 Mr. Moyle?

17 MR. MOYLE: I think we're okay with it as stated.

18 COMMISSIONER BAEZ: And Issue 5.

19 MR. MOYLE: I think we're okay with that as well.

20 COMMISSIONER BAEZ: Next is the exhibit list. Your  
21 changes are already captured. Did you check and see --

22 MR. MOYLE: That's right. It's my understanding that  
23 Staff has worked with us to make those changes.

24 COMMISSIONER BAEZ: Okay. Proposed stipulations,  
25 we've already got Issue 3 withdrawn, so let the order reflect

1 that. And the pending motions, I'm not showing more than two  
2 here. Show them both granted.

3 MR. MOYLE: Probably -- I'd just bring, bring to your  
4 attention, hopefully this is the last you will hear of this,  
5 but today is the last day for discovery to be provided, and I  
6 believe that discovery is due to be provided today.

7 Ms. Masterton and I are going to work on a protective  
8 agreement, confidentiality agreement, which I think we won't  
9 have a problem working through. But to the extent there is a  
10 dispute over whether something should be provided or should not  
11 be provided, if there is, we'll try to bring it to your  
12 attention on a very expedited basis in the form of a motion to  
13 compel or something. Hopefully we will not have that and we  
14 can work through it, but I did just want to bring it to your  
15 attention.

16 COMMISSIONER BAEZ: Fair enough.

17 MS. MASTERTON: Yeah. Let me just say, today is the  
18 date for filing objections. And I request for clarification, I  
19 think the actual due date for the discovery is July 31st. So  
20 we were intending to file objections today, but we aren't  
21 intending to file our actual responses until July 31st.

22 COMMISSIONER BAEZ: Is that your understanding?

23 MR. MOYLE: Yeah. I'm keying on the objections  
24 because, to the extent there's an objection, that's where we  
25 may have a disagreement.



1 COMMISSIONER BAEZ: And we are on Section XIII. Any  
2 changes to the decisions?

3 MR. DODGE: All right. Unless it's been picked up in  
4 Staff's newer version, Your Honor, I noticed our second cited  
5 authority misspells the word "Verizon."

6 MS. DODSON: That has been corrected in the final  
7 revised version.

8 MR. DODGE: Thank you.

9 COMMISSIONER BAEZ: Okay. And to the extent that  
10 there are any other additions, you can take that up with Staff.

11 In the ruling show the five minutes, show that as  
12 five.

13 All right. I'm at the end of the document. Is there  
14 anything else pending?

15 MS. DODSON: Nothing further.

16 COMMISSIONER BAEZ: Nothing further? Anything from  
17 the parties?

18 MR. MOYLE: I don't believe we have anything further.  
19 I appreciate your time.

20 MS. MASTERTON: Nothing from Sprint.

21 COMMISSIONER BAEZ: All right. Great. Thank you all  
22 for coming.

23 MR. DODGE: Thank you, Your Honor.

24 COMMISSIONER BAEZ: Goodbye, Mr. Dodge. Thank you  
25 for joining us.

1 MR. DODGE: My pleasure.

2 COMMISSIONER BAEZ: And we're adjourned.

3 (Prehearing Conference concluded at 1:45 p.m.)

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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 25TH DAY OF JULY, 2002.

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LINDA BOLES, RPR  
FPSC Official Commissioner Reporter  
(850) 413-6734