

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Florida Power and Light Company)
For Emergency Rule or, Alternatively,) Docket No. 060355-EI
Declaratory Statement Prohibiting Wireless)
Attachments in Electric Supply Space) Filed: May 30, 2006

**SPRINT NEXTEL’S RESPONSE TO FPL’S
MOTION FOR STAY OF PROCEEDINGS**

Sprint Spectrum Limited Partnership, d/b/a Sprint PCS, and Nextel South Corporation (collectively, “Sprint Nextel”), through its undersigned counsel, hereby respond to Florida Power & Light Company’s (FPL) Motion for Stay of Proceedings. This proceeding should not be “stayed,” rather FPL’s petition should be dismissed and this docket should be closed.

1. On April 24, 2006, Florida Power and Light Company (FPL) filed a Petition for Emergency Rule or, Alternatively, Declaratory Statement (Petition) with the Commission. The Petition asks the Commission to adopt an *emergency* rule which would prohibit wireless telecommunications attachments in electric supply space. Alternatively, FPL seeks a declaratory statement prohibiting T-Mobile South LLC (T-Mobile) from attaching wireless telecommunications devices to FPL’s poles until the conclusion of Docket No. 060173-EU.

2. On May 4, 2006, Sprint filed a Petition to Intervene in this docket, as its substantial interests will be affected by any action the Commission takes regarding FPL’s Petition. An order on Sprint’s request to intervene has not yet been entered, though the time for objection has run and Sprint understands that FPL has no objection to its intervention.

3. On May 12, 2006, T-Mobile filed a Response in Opposition to FPL's Petition and requested that the relief sought by FPL be denied. On May 22, 2006, Sprint adopted the response of T-Mobile.

4 On May 22, 2006, FPL filed a "Motion for Stay of Proceedings." FPL represents in its motion that Sprint Nextel is opposed to the motion. As explained herein, Sprint Nextel is opposed to a stay of this docket as absolutely no basis for the docket exists and it should be closed.

5. FPL's Motion for Stay demonstrates that FPL now admits that the "emergency"¹ giving rise to its April 24th petition (possible future action at the FCC) has passed. Seeking a stay of an emergency petition is clear evidence that no emergency exists. Even putting aside whether there ever was an "emergency" at all, there is certainly no emergency now. Therefore, there is no basis for FPL's petition, and thus no basis to stay this matter. This docket should be closed.

6. FPL's Motion for Stay further highlights that the docket should be closed on jurisdictional grounds as well as for lack of emergency. FPL's tortured reading of Section 224 does not undo the fact that Congress gave the FCC jurisdiction over regulation of "rates, terms and conditions, or access" to utility poles unless "such matters are regulated by a State."² Florida has not certified that it regulates "such matters," so the FCC retains full jurisdiction over competitors' access to pole attachments in the State. The Commission should not allow itself to be used by FPL as an excuse to resist entirely CMRS providers' attempts to negotiate access to utility poles for the placement of wireless antennas on pole tops as if there were a presumption that such access were not

¹ For the reasons set out in T-Mobile's response to FPL's petition, Sprint notes that there was never an emergency and FPL's petition failed to comply with the requirements for an emergency rule in § 120.54(4), Florida Statutes.

² 47 U.S.C. § 224

permissible simply because it is a “marked deviation from anything FPL has done before.” To the contrary, the FCC explicitly rejected such a presumption. FPL should apply to the FCC if it believes pole top access should be limited for reasons of safety, reliability, or engineering purposes.³ This docket should be closed.

WHEREFORE, Sprint Nextel requests that the Commission deny FPL’s Petition for Emergency Rule and close this docket.

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman
Moyle, Flanigan, Katz,
Raymond, White & Krasker, P. A.
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301
850-681-3828 (o)
850-681-8788 (f)
vkaufman@moylelaw.com

Douglas C. Nelson
Sprint Nextel
3065 Cumberland Circle, SE
Atlanta, Georgia 30339
404-649-4308 (o)
404-649-1652 (f)
Douglas.c.nelson@sprint.com

Attorneys for Sprint Nextel

³ *Wireless Telecommunications Bureau Reminds Utility Pole Owners of Their Obligations to Provide Wireless Telecommunications Providers with Access to Utility Poles at Reasonable Rates*, FCC Public Notice, DA 04-4046, December 23, 2004.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to FPL's Motion for Stay of Proceedings has been furnished by electronic and U.S. mail this 30th day of May 2006 to:

Larry Harris
Samantha Cibula
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
lharris@psc.state.fl.us
scibula@psc.state.fl.us

John T. Butler
9250 West Flagler Street
Miami, FL 33174
John_butler@fpl.com

R. Wade Litchfield
Natalie Smith
700 Universe Boulevard
Juno Beach, FL 33408-0420
Wade_Litchfield@fpl.com
Natalie_Smith@fpl.com

Floyd Self
215 South Monroe Street, Suite 701
Tallahassee, FL 32302-1876
fself@lawfla.com

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman