

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Ronald MacKenzie,	)	
	)	
Complainant,	)	
vs.	)	Case No. IC-2004-0608
	)	
Sprint Missouri, Inc., d/b/a Sprint-ILEC,	)	
(Telephone)	)	
	)	
Respondent.	)	

**SPRINT ANSWER, AFFIRMATIVE DEFENSES,  
AND MOTION TO DISMISS**

COMES NOW Sprint Missouri, Inc. ("Sprint"), and respectfully states the following to the Missouri Public Service Commission ("Commission") as its Answer, Affirmative Defenses and Motion to Dismiss to the Complaint filed by Ronald MacKenzie ("Complainant"):

**BACKGROUND**

1. On June 21, 2004, Complainant Mr. Ronald MacKenzie filed a complaint with the Commission against Sprint requesting that the Commission order Sprint to raise a segment of telecommunications line passing over Complainant's property to a height of 15.5 feet at no cost to Complainant. Upon information and belief, Sprint installed the poles and connecting line in 1975 in compliance with the applicable height restrictions. Now almost 30 years after installation, Complainant claims that Sprint violates the applicable code. While Sprint is happy to install new poles and raise the height of its telecommunications line per the Complainant's request, Sprint should be allowed to charge for this service according to its tariffs given that Sprint is in compliance with the

appropriate height restrictions and has been for almost 30 years. In sum, the Commission should dismiss the complaint for failure to state a claim, that it is barred by the statute of limitations, and because the Complainant has waived any claim against Sprint.

2. This complaint arose when the Complainant began building a house on a rural, previously undeveloped parcel of land. Specifically, the issue concerns a segment of Sprint's telecommunications line located at or near 411 SW 1025<sup>th</sup> Road, Chilhowee, Missouri. Sprint installed the poles in question and the connecting telecommunications line in 1975. The Complainant initially contacted the Commission Staff on March 26, 2004 stating that the Complainant was building a new home and that the telecommunications lines were barely off the ground. At that time, the Complainant did not file a complaint with the Commission, but rather made an inquiry into whether any costs would be incurred for the raising of a telecommunications line on Complainant's property. Subsequently, John Rostine, a Sprint engineer, investigated the matter and confirmed that the current line height was ten feet four inches and well within the required height of nine feet five inches.<sup>1</sup> On or about April 6, 2004, John Rostine met with Complainant informing him that the current line height was in compliance with all applicable Commission rules and regulation, and that the installation of a new pole would be required in order to raise the telecommunications line from its current height to that requested by the Complainant. Moreover, Complainant was informed that he would incur a cost for this additional work pursuant to the terms of Sprint's General Exchange

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<sup>1</sup> 4 CSR 240-18.010 Safety Standards for Electric Utilities, Telecommunications Companies and Rural Electric Cooperative, incorporating by reference, Parts 1, 2, and 3 and Sections 1, 2, and 9 of the *American National Standard, National Electrical Safety Code* (NESC).

Tariff.<sup>2</sup> Thus, Sprint has provided Complainant with a clear and thorough answer to his initial inquiry.

3. Moreover, Complainant was informed by Mick Johnson with the Missouri Public Service Commission Staff as well as Sprint Engineer John Rostine of the specific costs involved with raising of the telecommunications line through the installation of new poles, which included an itemized break down of the specific costs. Subsequent to being informed of the cost of raising the line height, the Complainant filed the complaint at hand.

### **ANSWER**

For its Answer to the allegations contained in each of the numbered paragraphs of the complaint, Sprint states the following.

4. In response to the allegations contained in paragraph one of the Complainant, Sprint admits that it is a public utility subject to the jurisdiction of the Commission as provided by law.

5. With respect to the allegations contained in paragraph two, Sprint admits that Complainant did contact Sprint at some point and inquired whether an installed telecommunications line could be raised. With regard to the address of the property, Sprint does not have sufficient information to either admit or deny that particular allegation. Sprint admits that its position is that the line be raised at Complainant's expense. Sprint denies that the cited section of the National Electrical Safety Code is the appropriate section. Sprint denies all other aspects of paragraph two not specifically admitted herein.

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<sup>2</sup> Sprint Missouri General Exchange Tariff, P.S.C. MO. No. 22 Section 8, First Revised Page 5. IV. A. Special Construction.

6. With respect to the allegations in paragraph three, Sprint admits that discussions were held between Sprint and Complainant. Sprint is without sufficient knowledge to admit or deny Complainant's description of its contacts with the Commission. Sprint denies all other aspects of paragraph three not specifically admitted herein.

7. Sprint denies in all aspects the request for relief and any allegation contained in the complaint which is not specifically admitted herein.

8. Further answering, Sprint states that it has acted in accordance with Commission rules and regulations.

#### **MOTION TO DISMISS AND AFFIRMATIVE DEFENSES**

9. The Commission should dismiss this complaint as it fails to state any cause of action or basis upon which relief can be granted by the Commission because Sprint is compliance with Commission rules. Moreover, Complainant's action is barred by the applicable statute of limitations and the doctrine of waiver in that the applicable poles were installed almost thirty years ago and Complainant filed his complaint in June 2004.

10. Complainant has created this issue by substantially changing the landscape of the property in question. Complainant is currently working to modify the property from undeveloped rural property to a personal residence with a driveway which would traverse under the telecommunications line in question. Thus, Complainant is creating by his own volition the need to raise the line height. Sprint should not be forced to make adjustments to the current line height without compensation pursuant to its tariff when, but for the Complainants own actions, the line height would be adequate.

11. The complaint should be dismissed for failure to state a claim because Complainant relies on an incorrect section of the National Electrical Safety Code (NESC) as the fundamental basis for his claim. Sprint abides by the appropriate standard of 9.5 feet for spaces and ways subject to pedestrians or restricted traffic only. NESC, Section 5. Complainant cites a section of the NESC which governs standards for, "land traversed by vehicles, such as cultivated, graving, forest, orchards, etc."<sup>3</sup> However, the Complainant's property is undeveloped rural property, not cultivated property, grazing land, forest, or an orchard. Moreover, footnote 9 to Section 5 of Table 232-1 of the NESC states the following:

Spaces and ways subject to pedestrian or restricted traffic only are those areas where riders on horses or other large animals, vehicles or other mobile units, exceeding a total height of 8 feet are prohibited by regulation or permanent terrain configuration, or are otherwise not normally encountered or reasonably anticipated.

In addition, Section 10 of Table 232-1 of the NESC further states:

Roads in rural districts where it is unlikely that vehicles will be crossing under the line . . . Where a supply or communication line along a road is located relative to fences, ditches, embankments, etc, so that the ground under the line would not be expected to be traveled except by pedestrians, this clearance may be reduced to the following values: (a) Insulated communications conductor and communications cables – 9.5 feet.

Clearly, the more applicable sections of the NESC set the standard at nine feet five inches. Sprint could not reasonably have anticipated that vehicles would be encountered, reasonably anticipated or expected to be traveled. The lines were installed in 1975 on undeveloped property. Now, Complainant is developing the property almost thirty years later and claims that the code section related to land traversed by vehicles should apply

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<sup>3</sup> National Electrical Safety Code, Table 232-1 – Vertical Clearance of Wires, Conductors, and Cables Above Ground, Roadway, Rail, or Water Surfaces, Section 4.

because Complainant is now installing a driveway. It certainly is not fair for Sprint to have to anticipate development on all land that its lines and poles traverse. Sprint has reasonably concluded for almost thirty years that traffic is not anticipated at the location. Therefore, the Complainant does not have a basis for his claim as the current height of the telecommunications line is ten feet four inches and well within the applicable standards. Sprint will increase the height of its poles to accommodate Complainant's vehicles but Complainant should be responsible monetarily pursuant to Sprint's tariffs for increasing the height of the poles.

12. Complainant's claim is further barred by the applicable statute of limitations. Missouri Statute § 516.110 provides for a ten year statute of limitations for actions not otherwise limited. Sprint installed the poles in question on Complainant's property in 1975. The latest that Complainant could have brought an action against Sprint for non-compliance with Commission rules is 1985. Missouri Statute §516.100 requires that civil actions must be commenced within the time frames prescribed in Section 516. Because Complainant did not bring his claim within ten years after the poles were placed, the claim is barred by the statute of limitations and should be dismissed for that reason alone.

13. The doctrine of waiver also applies. Complainant's acquiescence to the placement of the poles and the height of the wire since 1975 is evidence that Complainant has waived any claims against Sprint for non-compliance with Commission rules.

WHEREFORE, Sprint Missouri, Inc., having fully answered and set forth its affirmative defenses and motion to dismiss, respectfully requests that the Commission dismiss the Complaint.

Respectfully submitted,

SPRINT



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above and foregoing was served on the following parties by first-class/electronic/facsimile mail, this 23 day of July, 2004.

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