

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

Melody Sue Moss,)	
)	
Complainant,)	
v.)	<u>File No. IC-2015-0286</u>
)	
Windstream Missouri, Inc.,)	
Respondent.)	

**WINDSTREAM MISSOURI, INC.'S SUPPLEMENTAL ANSWER TO COMPLAINT,
MOTION TO DISMISS, AND AFFIRMATIVE DEFENSES**

COMES NOW Windstream Missouri, Inc. ("Windstream"), pursuant to Commission Rule 4 CSR 240-2.070, and respectfully submits its Supplemental Answer, Motion to Dismiss and Affirmative Defenses to the Complaint filed by Ms. Melody Sue Moss.

SUPPLEMENTAL ANSWER TO COMPLAINT

1. On June 2, 2015, Windstream submitted its Response¹ in this matter (incorporated herein by reference), wherein Windstream reported that its repair records note multiple trouble tickets reported by Ms. Moss between September – November of 2014; that its technicians performed both frequency response, and loop current tests at each visit and found no issues; and that the service is functioning correctly. Any allegations in Ms. Moss' complaint not specifically admitted in the Response or this Supplemental Answer should be considered denied.

¹ The Response, dated May 28, 2015, was entered in the Commission's Electronic Filing Information System ("EFIS") on June 2, 2015.

2. Since that time, and in response to the Commission's previous order directing Staff to investigate the complaint and file a report, Staff filed its Status Report in this proceeding on July 17, 2015. As noted in the Status Report, Ms. Moss' complaint essentially alleges "that she had experienced severe shocks from using her telephone, and that there were exposed wires on the utility pole near her home."² In addition, as fully explained in the verified *Memorandum* attached to its Status Report, the Staff states:

. . . Staff investigated the complaint and determined that Windstream did not violate its tariff or any law or rule of the Commission in this matter. Windstream has replaced the existing dry spot in question with a new one equipped with a cover. Staff travelled to the residence to investigate the complaint and found Ms. Moss' service to be in good working condition." (emphasis added).³

Indeed, as the verified Memorandum of the Staff concludes: **"In addition, Staff does not find anything in Ms. Moss's complaint that the Commission can address."** (Memorandum, page 2 of 2, emphasis added).

3. Further answering, it appears that the narrative in Ms. Moss' complaint also reflects a request that the inside wiring currently in her crawlspace underneath her house be routed on the outside of her house. Inside Wire is owned by the customer, and Windstream has provided Ms. Moss with a quote to move her Inside Wiring. Again, as reported in the verified Memorandum of Staff:

She expressed concern that her inside wire ran on top of the heating ducts. Upon my investigation, the Inside Wire was not routed over the heating ducts but was routed directly from the Network Interface Device ("NID") to the two locations in the house where she has her wall telephones. Nevertheless, Mr. Moss stated that she wants her Inside Wire routed on the outside of the house. Ms. Moss understands Inside Wire is owned by the customer and Windstream can charge for installing, moving

² Status Report, page 1.

³ *Id.*

or repairing Inside Wire. Windstream has provided Ms. Moss with a quote to move her Inside Wiring. Staff understands Ms. Moss originally refused to pay for this work but now Ms. Moss appears willing to pay for this work.⁴

MOTION TO DISMISS

In accordance with Commission Rule 4 CSR 240-2.070(7), Windstream hereby moves that the Commission dismiss the above-captioned matter for failure to state a claim upon which relief may be granted. In support of its Motion, Windstream respectfully states:

1. Windstream restates and incorporates by reference its Response and Supplemental Answer provided herein.

2. Windstream is mindful of the intent and purpose of the Commission's promulgation of its "Small Formal Complaint Case" procedure, and its resulting accommodations afforded pro se complainants. Nevertheless, the record before the Commission in this matter clearly reveals that there is no justiciable claim to be resolved regarding Ms. Moss' service. Accordingly, Windstream respectfully submits that neither the Respondent, nor the Staff of the Commission, should be required to expend additional time and resources in this matter. If judicial efficiency is to have any merit, this is the case.

3. As fully discussed in the verified Staff Status Report, Windstream's responses to the Complainant's unfounded allegations have been fully substantiated by the Staff's complete, independent investigation in this matter. In addition to direct contacts with the Company, via both conversations and data request, Staff travelled to the Complainant's location to personally investigate the complaint, finding the telephone

⁴ Memorandum to Staff Report, Page 2 of 2.

service to be properly installed and working. The Staff Report totally repudiates the Complainant's allegations of receiving electric shocks from her telephone service.⁵

4. Simply put, the Staff has already advised the Commission, supported by verified affidavit, of its determination "that **Windstream did not violate its tariff or any law or rule of the Commission in this matter.**" (emphasis added). Furthermore, to the extent that Ms. Moss appears to allege that she has received injury and/or damage, this Commission is well aware that it cannot award damages or pecuniary relief.

5. Furthermore, as the Staff explicitly advised the Commission during the recent rescission and consolidation of the rules applicable to telecommunications providers in Case No. TX-2015-0097, in general, the establishment of retail telecommunications service standards exceeds the Commission's current authority as described in Section 392.611, RSMo. In addition, as the Staff also pointed out therein, most of those existing rules had been waived for companies pursuant to Section 392.420, RSMo., and that is the case for Windstream. Albeit, while the proposed rule 28.060(1) would still require a company to comply with certain safety standards, both the Company's testing – and more significantly, that of the independent Staff investigator supported by verified affidavit – confirm the telephone service to complainant to be properly installed and working.

⁵ With all due respect, upon inquiry from the Regulatory Law Judge during the Prehearing Conference held September 29, 2015, Ms. Moss offered that the shocks through her telephone are dependent "according to a lot of different factors" . . . "just say, for instance, there is an airplane in the airspace or that there is a loud vehicle . . . "if I'm on the telephone for -- for me to start getting the shocks sooner." (Tr. 8). While apparently not a component of the instant complaint, Staff's Technician also noted: "Ms. Moss also complains of a constant humming that she hears all the time, whether she is using the telephone or not. She states that this is the result of Electromagnetic Force ("EMF") and the numerous television satellite dishes on her neighbor's houses. She also believes that her telephone is being monitored by some unknown entity and she believes that it is likely the government." Memorandum, page 2 of 2.

6. For all of the foregoing reasons, Windstream respectfully requests that the Commission dismiss Ms. Moss' complaint.

AFFIRMATIVE DEFENSES

1. Complainant fails to state a claim upon which relief may be granted. Windstream incorporates by reference the statements and allegations contained in its Response, Supplemental Answer and Motion to Dismiss above.

2. Complainant's claims are barred by state law.

WHEREFORE, having fully answered, Respondent Windstream Missouri, Inc. respectfully requests the Commission to enter an Order dismissing the Complaint, and for such other further and additional relief as may be appropriate.

Respectfully submitted,

/s/ Larry W. Dority

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**ATTORNEYS FOR WINDSTREAM
MISSOURI, INC.**

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, First Class mail, postage prepaid, this 22nd day of October, 2015, to all parties of record in this matter.

/s/ Larry W. Dority
Larry W. Dority