

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Research)
Medical Center for certificate of)
service authority to provide shared tenant)
services within the state of Missouri.)

Case No. TA-92-113, et al.

APPEARANCES:

J. Richard Smith, Attorney at Law, Craft, Fridkin & Rhyne,
4435 Main Street, Suite 1100, Kansas City, Missouri 64111, for
Medical Research Center.

Joseph F. Jedlicka, III, Attorney at Law, 100 North Tucker
Boulevard, Room 630, St. Louis, Missouri 63101-1976, for
Southwestern Bell Telephone Company.

Randy Bakewell, Assistant Public Counsel, Office of the Public
Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for
the Office of the Public Counsel and the public.

Lee C. Tieman, Assistant General Counsel, Missouri Public
Service Commission, P.O. Box 360, Jefferson City, Missouri
65102, for the Staff of the Missouri Public Service
Commission.

HEARING

EXAMINER:

Dale Hardy Roberts

REPORT AND ORDER

On November 25, 1991, the Applicants, designated by the following names and case numbers: Research Medical Center, TA-92-113; Baptist Medical Center, TA-92-107; Trinity Lutheran Hospital, TA-92-108; Medical Center of Independence, TA-92-109; Lafayette Regional Health Center, TA-92-110; Lee's Summit Hospital, TA-92-111 and Research Belton Hospital, TA-92-112, (Applicants) individually filed verified applications seeking Certificates of Service Authority to provide shared tenant services (STS) and requested waivers of the single building or less requirement. The Commission issued an Order and Notice, for each individual Applicant, on December 6, 1991.

The Commission Staff filed its Memorandum in Case TA-92-113 on September 25, 1992; in Case TA-92-107 on August 5, 1992; in Case TA-92-108 on August 5, 1992, in Case TA-92-109 on September 14, 1992; in Case TA-92-111 on September 25, 1992, and in Case TA-92-112 on September 25, 1992. Staff reviewed the applications in light of twelve standards for providing STS established in

Case No. TO-86-53 and concluded that the instant applications do not meet the standard(s) due to the single building limitation. However, Staff recommended the Commission waive the single building limitation. On October 30, 1992, the Commission issued an order consolidating all of these cases, with the exception of TA-92-110, into one docket and designated Case No. TA-92-113 as the lead case. On November 17, 1992, the Public Service Commission Staff (Staff) filed a Motion to Consolidate Case No. TA-92-110 with TA-92-113, et al. The Staff noted that no Staff recommendation had yet been filed as to TA-92-110 and that unlike each of the other Applicants who are served by a Southwestern Bell Telephone area the Applicant in TA-92-110 is served by United Telephone service. But for those two differences all other factual and legal matters in these cases were identical. Staff further indicated that if it were to file a Memorandum on TA-92-110, it would "mirror" the recommendation in TA-92-113, et al. On December 2, 1992, TA-92-110 was consolidated with TA-92-113, et al.

On January 12, 1993, the Commission granted intervention to Southwestern Bell Telephone Company (SWBT). And, on April 26, 1993, a unanimous Stipulation was filed by the parties through which they sought to resolve the issue of the Applications before the Commission. On May 14, 1993, the Commission issued an order setting a hearing in this matter for June 11, 1993.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

"Private shared tenant services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the commission by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of local exchange telecommunications companies and to interexchange telecommunications companies as defined in 386.020(30) RSMo (Cum. Supp. 1992).

The Commission concludes that an Application for a Certificate of Service Authority to provide Shared Tenant Services is a heavily fact-dependent matter. As with any adversarial or contested matter which comes before the Commission, the burden of persuasion rests upon the Applicant and every such Application must be judged on its own individual merit. For this reason, the Commission finds that the emphasis on the issue of a waiver is misplaced. The granting of a certificate herein does not, and cannot, establish a precedent as to any future Application for certificate to provide STS service.

The Applicants are all individual hospital corporations which own and operate the facilities represented in each respective case and each Applicant owns the land upon which its buildings are located. Each of these hospital corporations is a subsidiary of Health Midwest Corporation and in every instance each Applicant operates a hospital or medical center with ancillary health care facilities which are not located within a single building but are in the immediate vicinity of the Applicant hospital. Each Applicant is a not-for-profit hospital which provides medical services to its respective communities and each anchors a medical campus consisting of multiple buildings. Each Applicant has articulated extensive telephone needs of the hospital and of the ancillary medical businesses which include, but are not limited to, physicians, health clinics, out-patient surgical clinics, and other medically related programs and businesses. At each location, the respective Applicants have purchased a common telephone switch to service the buildings in question and each of these switches is physically located at the Applicant's building. In addition to this, all of the owners and tenants of every site have agreed to be bound by extensive protective covenants and restrictions and in most cases the tenants in each building share common area costs and utilities. At each location, the respective Applicant owns riser cable which conforms with local exchange company standards and each Applicant has indicated that the local exchange company may have access to the cable at no charge in order to serve tenants who request direct service.

The threshold question in this case is whether it would be in the public interest for the Commission to grant the Applicants' request for waiver

of the "single building or less" limitation. The Commission has stated in Case No. TO-86-53 that it would entertain requests for waiver of the "single building or less requirement" for those buildings which constitute a "discrete private premise." And, the Commission has granted a waiver of this requirement twice in the past, in Case No. TA-92-57 and Case No. TA-91-352. However, neither of these waivers approached the scope or magnitude of the cases now before the Commission.

The Commission finds that the requested certificates would be in the public interest. This finding is based upon the fact that the local telephone company stranded investment would be minimized as there is no plan to target existing customers, nor is there any planned mass disconnection of telephone lines from the local exchange company. Also, the necessary Applicant facilities are in place and will continue to be provided for those tenants who wish to take service from the local exchange carrier. The Commission also finds that telephone service will be provided to each of the Applicants' buildings by a single switching center and each single switching center is limited to the capacity of the installed STS switches and, for that reason, only a finite number of ports are available.

These facts, in and of themselves, are not dispositive of whether a certificate should issue in these cases. However, for the purpose of this case and for these Applicants, the Commission finds that STS locations should be discrete private premises with, at least, the three (3) following components: (1) the first component would be that all buildings are located on either a continuous single tract of land or upon adjacent and abutting tracts of land, only separated by a public thoroughfare; (2) the second component would be that all buildings and land must be subject to the same common ownership interest and; (3) the third component would be that all buildings and all land should be located in the same wire center. The Commission finds that each and every one of the Applicants qualifies under all three (3) of these components. The Commission further finds it persuasive that there is a similar business relationship among all of the tenants which could provide a further restriction to the granting of a certificate. The Commission finds the unanimous Stipulation

offered by the parties is consistent with the public interest.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Applicant(s) met the procedural requirements of the Commission in terms of providing the documentation required by 4 CSR 240-2.060.

The Commission has jurisdiction over the Applicant(s) pursuant to 386.250 RSMo 1986 and the Commission has the authority to grant the permission and approval herein specified pursuant to 392.520, RSMo (Cum. Supp. 1992). Applicant is a public utility subject to Commission jurisdiction pursuant to the provisions of Chapters 386 and 392 RSMo 1986. Section 392.440 provides that the Commission shall approve such application upon a showing by the applicant and a finding by the Commission, after notice and hearing, that the grant of authority is in the public interest. As a corollary to this, the Commission concludes that it has the authority to accept and approve a Stipulation which is in the public interest.

The Commission set twelve standards for providing STS in Case No. TO-86-53. Staff has reviewed the application in light of those standards and concluded that the instant applications meet all of them except for the single building limitation. In the Report and Order in Case No. TO-86-53 the Commission stated that it would consider granting waivers to the single building limitation if such a waiver would not be detrimental to the public interest and would otherwise be consistent with Commission policy and with the statutory requirements of constituting a discrete private premise.

The Commission has considered the evidence and Stipulation in these cases and has found that these Applications should be permitted although the shared tenant services will be permitted as more than a single building. The Commission concludes the approved arrangements still meet the requirement of Section 386.020(30) RSMo (Cum. Supp. 1992) as discrete private premises.

The Applicants meet the conditions established in Case No. TO-86-53 with the exception of the "single building or less" limitation. The Commission

concludes that the Applicants constitute "private shared tenant services" and that under the circumstances their respective locations are "discrete private premises" as set out in 386.020(30) RSMo (Cum. Supp. 1992).

The Commission has jurisdiction over the provision of private shared tenant services and shall establish the rates or charges and terms of connection for access by such services to the local exchange network pursuant to 393.520 RSMo 1992 (Supp.).

Based upon the evidence presented, the Commission concludes the proposed service is necessary and convenient for the public interest. The Commission concludes that the Certificate of Convenience and Necessity should be granted. The Commission has concluded that the Applicants are qualified, both technically and financially, to undertake this project, that there is a need for these service, and that they will promote the public interest.

IT IS THEREFORE ORDERED:

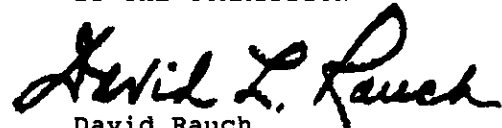
1. That the Commission hereby grants the Certificates of Convenience and Necessity to Research Medical Center, TA-92-113; Baptist Medical Center, TA-92-107; Trinity Lutheran Hospital, TA-92-108; Medical Center of Independence, TA-92-109; Lafayette Regional Health Center, TA-92-110; Lee's Summit Hospital, TA-92-111 and Research Belton Hospital, TA-92-112 authorizing them to provide shared tenant services as set out in their respective Applications.

2. That the Commission accepts and approves the Stipulation and Agreement filed by the parties subject to any conditions and limitations herein.

3. That the certificates granted herein apply only to the buildings described and does not extend to any other building(s).

4. That this order shall become effective on August 31, 1993.

BY THE COMMISSION


David Rauch
Executive Secretary

(S E A L)

McClure, Perkins and
Crumpton, CC., Concur.
Mueller, Chm. and Kincheloe, C., Absent.

Dated at Jefferson City, Missouri,
on this 20th day of August, 1993.