

ATTACHMENT A

St. John's Regional Medical Center

(Full Company Name)

SHARED TENANT SERVICES CARRIER

ANNUAL REPORT

TO THE

MISSOURI PUBLIC SERVICE COMMISSION

For Period Ending December 31, 2002

for the year ended December 31, 2002

1. State in full the exact '**certificated**' name of the Shared Tenant Services Carrier:
(Do not abbreviate; yet include any Commission approved fictitious name, if applicable.)

St. John's Regional Medical Center

2. Effective date of certification by the MO Public Service Commission and associated case number:

Date (e.g. 00/00/0000): 09/01/98 Case No: TA 98 121

3. Was the company certificated in Missouri under any other name(s)? If yes, please provide all names and time periods involved since the original certification:

NO

4. State the name, title, street address, telephone number, fax number, and e-mail address* of the individual completing/verifying this Annual Report:

Russ Sills - Telecommunications Director	phone - 417-625-2966
St. John's Regional Medical Center	fax - 417-625-2908
2727 McClelland Blvd.	email - rsills@stj.com
Joplin, Missouri 64804	

(*) To facilitate electronic sending of the Annual Report form next year.

5. State the name, title, street address, telephone number, fax number, and e-mail address of the company's regulatory contact person(s):

Jane Obert - Director Contract Services	phone - 417-625-2206
St. John's Regional Medical Center	fax - 417-659-6910
2727 McClelland Blvd.	email - jobert@stj.com
Joplin, Missouri 64804	

6. Please provide a listing of all mergers, consolidations, and reorganizations, completed during the last year.

None

7. Please provide the following information concerning Total Company and gross intrastate operating revenues (i.e., Missouri Specific) Revenues for the Calendar Year 2002

Revenues:	Total Company	MO Specific
Operating Revenues* from Telecommunication Services	\$4,319.00	\$4,319.00

MO Specific should match Statement of Revenue
(FY-2005 Mo.PSC Assessment)

8. Type of Missouri tax return filed (i.e. MO-1065, MO-1120A, MO-1120S, MO-NRP, MO-NRS etc.): mo-990
9. Missouri Taxpayer ID: 13083988

* Missouri Revised Statutes §386.020(53)

(53) "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

(e) Services provided by a private telecommunications system;

(f) Cable television service;

(g) The installation and maintenance of inside wire within a customer's premises;

(h) Electronic publishing services; or

(i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission;

10. Please provide the following information for each shared tenant service location:

Name of Location: St. John's Medical Center**Location Description:** Medical Offices Building**Full Address:** 2817 McClelland Blvd.Joplin, Missouri 64804**Local Phone Company:** Southwestern Bell**Operator Services Provider:** Southwestern Bell**Number of Stations:**

29

**Is STS Offered in Multiple Buildings?
(Yes/No):**

no

Name of Location:**Location Description:****Full Address:****Local Phone Company:****Operator Services Provider:****Number of Stations:****Is STS Offered in Multiple Buildings?
(Yes/No):**

Name of Location:**Location Description:****Full Address:****Local Phone Company:****Operator Services Provider:****Number of Stations:****Is STS Offered in Multiple Buildings?
(Yes/No):**

11. In an effort to update our Electronic Filing & Information system (EFIS) with current company contact and address information please provide the following information. Either verify the information through EFIS and initial in space provided or complete each sub-type and the Data Center Staff will update as required.

a. Official Representative of the Company:*Information contained in EFIS is current:*
initials

Name: Jane Obert
Street/ PO Box: 2727 McClelland Blvd
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-625-2206
Fax number: 417-659-6910
E-mail address: jober@stj.com

b. Consumer Services:*Information contained in EFIS is current:*
initials

Name: Russ Sills
Street/ PO Box: 2727 McClelland Blvd.
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-625-2966
Fax number: 417-625-2903
E-mail address: rsills@stj.com

c. Individual to receive statement of revenue (assessment):*Information contained in EFIS is current:*
initials

Name: Russ Sills
Street/ PO Box: 2727 McClelland Blvd.
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-625-2966
Fax number: 417-625-2908
E-mail address (*): rsills@stj.com

(*) To facilitate electronic sending of the statement of revenue next year.

In addition provide specific contacts for areas (d. through n.) if applicable on the following pages. In lieu of additional contacts being provided, designate if a, b, or c, above should be identified as the contact.

d. Tariff:*Information contained in EFIS is current:*

initials

Name: _____
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

for the year ended December 31, 2002

11. continued

e. CFO/Comptroller:

Information contained in EFIS is current:


initials

Name: Augusto A. Noronha II
Street/ PO Box: 2727 McClelland Blvd.
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-625-2217
Fax number: 417-659-6910
E-mail address: tnoronha@stj.com

f. Technical:

Information contained in EFIS is current:


initials

Name: Russ Sills
Street/ PO Box: 2727 McClelland Blvd.
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-625-2966
Fax number: 417-625-2908
E-mail address: rsills@stj.com

g. Surveillance:

Information contained in EFIS is current:

initials

Name: _____
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

h. In-House Attorney:


Information contained in EFIS is current:

initials

Name: _____
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

i. Attorney:

Information contained in EFIS is current:


initials

Name: Gina Atteberry - Spencer, Scott, Dwyer PC
Street/ PO Box: 402 Main P.O. Box 278
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-623-6211
Fax number: 417-624-6981
E-mail address: gatteberry@ssdlawyers.com

for the year ended December 31, 2002

11. continued

j. Consultant:

Information contained in EFIS
is current: _____

Name: _____ initials
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

k. Other:

Information contained in EFIS
is current: _____

Name: _____ initials
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

l. Regulatory:

Information contained in EFIS
is current: _____

Name: Jane Obert
Street/ PO Box: 2727 McClelland Blvd.
City, State, Zip: Joplin, Missouri 64804
Telephone number: 417-625-2206
Fax number: 417-659-6910
E-mail address: jobert@stj.com


initials

m. Area Contact Entry:

Information contained in EFIS
is current: _____

Name: _____ initials
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

n. Carrier Billing Relations:

Information contained in EFIS
is current: _____

Name: _____ initials
Street/ PO Box: _____
City, State, Zip: _____
Telephone number: _____
Fax number: _____
E-mail address: _____

VERIFICATION

The foregoing report must be verified by the oath of the President, Treasurer, General Manager or Receiver of the company. The oath required may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

OATH

State Of Missouri
County Of Jasper } ss:

Augusto A. Noronha II makes oath and says that
(Insert here the name of the affiant)

s/he is the Treasurer
(Insert here the official title of the affiant)

of St. John's Regional Medical Center
(Insert here the exact legal title or name of the respondent)

that s/he has examined the foregoing report; that to the best of his or her knowledge, information, and belief, all statements of fact contained in the said report are true and the said report is a correct statement of the business and affairs of the above-named respondent.

January 1, 2002, to and including December 31, 2002

[Signature]
(Signature of affiant)

Subscribed and sworn before me, a Notary Public in and for the
State and county above named, this 14th day of April, 2004
My Commission expires April 3, 2008

Cathy Trewyn - Notary Public
Notary Seal for State of
Missouri - Jasper County
My Commission Expires 4/3/2008

[Signature]
(Signature of officer authorized to administer oaths)

Missouri Revised Statutes § 392.210

Original must be mailed to:
Manager of the Data Center
MoPSC, 200 Madison Street, Suite 100
P.O. Box 360, Jefferson City, MO 65102-0360

Case No. TC-2004-0406

ATTACHMENT B

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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
April 1, 2004
Jefferson City, Missouri
Volume 1

The Staff of the Missouri Public)
Service Commission,)
)
Petitioner,)
)
V.) Case No. TC-2004-0406
)
St. John's Regional Medical Center,))
)
Respondent.)

RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
KELLEN K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

MIDWEST LITIGATION SERVICES

Phone: 1.800.280.DEPO(3376)

Fax: 314.644.1334

Web: www.missouridepos.com

1 well as file a copy in this case.

2 JUDGE PRIDGIN: That's fine.

3 MR. STEWART: So that you'd have a complete
4 record in this docket.

5 JUDGE PRIDGIN: That would be fine. Thank
6 you very much. Anything else from the parties?
7 Mr. Bates?

8 MR. BATES: Judge, just to make a comment.
9 The language that is contained in the Order that set this
10 prehearing conference implies that there could be
11 settlement negotiations. I just wanted to point out to
12 the Commissioners, I understand that that language is
13 always in these sorts of orders, but Staff has not been
14 empowered to conduct any settlement negotiations at this
15 stage.

16 JUDGE PRIDGIN: I understand, Mr. Bates,
17 and thank you for pointing that out. That certainly leads
18 me into what I would normally say next, is that one of the
19 main reasons for the prehearing conference is to encourage
20 the parties to get together and discuss settlement. And
21 if that's not possible, I understand, and that still
22 leaves the other reason for the conference, and that is
23 for the parties to get together and hammer out a proposed
24 procedural schedule. That is due in a week. And you have
25 access to this room the rest of the day for you to discuss

ATTACHMENT C

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

Staff of the Missouri Public Service)
Commission,)

Complainant,)

v.)

Lockheed Martin Global)
Telecommunications Services, Inc.,)

Respondent.)

Case No. TC-2004-0415

In the Matter of Lockheed Martin Global)
Telecommunications Services, Inc.'s 2002)
Annual Report to the Commission as an)
Interexchange Telecommunications)
Carrier)

Case No. XE-2004-0488

**STAFF'S SUGGESTIONS IN SUPPORT OF
STIPULATION AND SETTLEMENT AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission and, in support of the Stipulation and Settlement Agreement filed in this matter on May 10, 2004 ("Agreement"), states as follows:

Introduction.

1. Staff initiated Case No. TC-2004-0415 by filing a complaint against Lockheed Martin Global Telecommunications Services, Inc. ("Lockheed Martin GTS"), alleging that Lockheed Martin GTS failed to file its 2002 Annual Report and had thus violated Section 392.210.1 RSMo. (2000)¹ and Commission Rule 4 CSR 240-3.540(1).

¹ All statutory citations are to RSMo. (2000).

Missouri, aside from its uncanceled certificate of service authority from the Commission, and has no additional income coming from its Missouri operations.

9. Although the Office of the Public Counsel is not a party to this Agreement, it has indicated informally to Staff it has no objection to the resolution of such complaint cases through settlement. The Commission's rules at 4 CSR 240-2.115 permit a response by any parties to such filings, and the Public Counsel may express any specific concerns through that mechanism.

Commission Authority.

10. The Commission has the authority to accept the provisions of this Stipulation and Settlement Agreement between the parties. Substantial legal authority supports the proposition that the Commission may exercise discretion in choosing to enforce statutory provisions, and that that discretion extends to settlement of claims brought before the Commission.

A. The Commission has Statutory Authority to Exercise Discretion.

11. A starting point in considering the Commission's authority to consider settlement of a statutory violation is the statute that has allegedly been violated. The relevant statute, Section 392.210.1, states that the "commission may, when it deems it advisable, exempt any telecommunications company from the necessity of filing annual reports until the further order of the commission." The Commission thus has the power to exempt a specific company, and possibly a class of companies.² The Commission may do so by order, as the statute explicitly states, until it countermands that order. The decision to exempt companies from the annual report filing requirement is completely within the Commission's discretion. This specific grant of authority overcomes the potential conflict with the general requirement set forth in Section

² As the Commission obtains revenue information to prepare its annual assessments from entirely separate documents (Statements of Revenue) submitted as called for by Section 386.370.5, annual report filings are not necessary to obtain this information.

392.390 that a telecommunications company, other than a private pay telephone provider, shall at a minimum file annual reports with the Commission.

12. The same statutory subsection, Section 392.210.1, also permits telecommunications companies to file their annual reports either “as and when required or within such extended time as the commission may allow” This authorization allows the Commission to extend the deadline if a company does not file its annual report by the initial deadline; and there is no statutory requirement that the Commission must make that extension prior to the time when the annual report is due. The Commission sets deadlines itself, and has done so by rule. As the statute contains no time restrictions, the Commission may exercise its authority and act as it deems appropriate. Section 392.210.1 also authorizes the Commission to fix the yearly period the annual report covers, prescribe the form of the reports,³ and make changes and additions to the forms as it deems proper. The cumulative effect of these grants of authority to the Commission evince intent for the Commission to conduct and supervise the annual reporting process in its entirety.

13. The Legislature has indicated that the Commission shall construe the provisions of Chapter 392, which includes the annual report filing requirement, to permit “flexible regulation of competitive telecommunications companies” such as Lockheed Martin GTS. Section 392.185. Certainly, the provisions of Section 392.210.1 predate the era of flexible regulation and competition in the telecommunications industry, but the mere fact that the annual report filing requirements predate the competitive era does not limit the Commission from applying them with discretion -- as noted in the preceding paragraphs, even the terms of Section 392.210 itself

³ It is worth noting that Section 392.210.1 also states that the “form of such [annual] reports shall follow, as nearly as may be, the form prescribed by the Federal Communications Commission.” However, entities such as Lockheed Martin GTS, a provider of competitive basic local exchange and local exchange telecommunications services and interexchange telecommunications services, does not file such an annual report with the Federal Communications Commission, and thus the Commission form does not follow a FCC-prescribed form.

permit the Commission to waive its terms, and additional legislative revision would therefore not have been needed to institute Section 392.185's flexible regulatory framework. Section 392.390.1, mandating annual report filings by telecommunications companies, also predates the competitive provisions enacted in 1996 through Senate Bill 507 (including Section 392.185), but again, the specific exemption provisions of Section 392.210.1 give the Commission authority such that a modification to those provisions would not have been necessary.

B. Judicial Authority Supports Commission Discretion.

14. On a broader level, the Missouri Supreme Court has addressed the scope of a governmental agency's powers in the context of public officers. The Court, in an examination of the authority of a public officer and the possibilities of exercise of discretion, based its holdings on a study of principles that apply equally well to the Commission.

'The duties of a public office include those lying fairly within its scope, those essential to the accomplishment of the main purpose for which the office was created, and those which, although incidental and collateral, serve to promote the accomplishment of the principal purposes.' 46 C.J. Sec. 301, p. 1035.

'The rule respecting such powers is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, *such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers.*' Throop's Public Officers, Sec. 542, p. 515.

'Necessary implications and intendments from the language employed in a statute may be resorted to to ascertain the legislative intent where the statute is not explicit, but they can never be permitted to contradict the expressed intent of the statute or to defeat its purpose. That which is implied in a statute is as much a part of it as that which is expressed. A statutory grant of a power or right carries with it, by implication, everything necessary to carry out the power or right and make it effectual and complete, but powers specifically conferred cannot be extended by implication'. 59 C.J. Sec. 575, pp. 972, 973; *Hudgins v. Mooresville Consol. School Dist.*, 312 Mo. 1, 278 S.W. 769; *State ex rel. Wahl v. Speer*, 284 Mo. 45, 223 S.W. 655; *In re Sanford*, 236 Mo. 665, 139 S.W. 376.

State, on Inf. McKittrick v. Wymore, 132 S.W.2d 979, 987-88 (Mo. 1939)(emphasis supplied).

15. The U.S. Supreme Court also has discussed administrative agency discretion with respect to enforcement actions. That Court has found that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.” *Heckler v. Cheney*, 470 U.S. 821, 831 (1985) (citations omitted). The Supreme Court then outlined the reasons for this perspective. Briefly, the Supreme Court found the agency decision involves a balancing of factors peculiarly within the agency’s expertise, as it must assess:

- whether a violation has occurred,
- whether agency resources are best spent on this violation or another,
- whether the agency is likely to succeed if it acts,
- whether the particular enforcement action requested best fits the agency’s overall policies, and
- whether the agency has enough resources to undertake the action at all.

Id. The Court also interpreted the statutory directive in that case (that violators of the statutory provisions “shall be imprisoned”) in a manner contrary to the argument advanced by the losing party (that the statutory directive “mandates criminal prosecution of every violator of the Act”), in part because no case law or legislative history supported the position that all potential violations must be prosecuted. *Id.* at 835. The Court also based its decision on a series of arguments more directly tied to the particular statutes, but definitively stopped short of finding that the use of the term “shall” necessarily requires agency action.⁴ *Id.* at 835-38.

C. The Commission’s General Statutes Grant The Commission Discretion.

16. Section 386.600 RSMo. (2000) grants the Commission the authority to bring forfeiture or penalty cases. However, the Legislature grants the authority by stating that the

⁴ For an extensive discussion of the use of the word “shall,” contrasted with “may,” “must,” “will,” and other terms, see Bryan A. Garner, “Words of Authority,” in *A Dictionary of Modern Legal Usage*, (2nd Ed. 1995) at 939-42.

Commission's "action ... *may* be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted by the general counsel to the Commission." (Emphasis supplied). The use of the discretionary word "may" in conjunction with the verb 'to bring' may grant the Commission discretion whether 'to bring' an action designed to recover penalties or forfeitures. If the Commission chooses to bring such actions, the Legislature has directed that they be brought in circuit court (and correspondingly, grants circuit courts jurisdiction over such cases). The Commission is to use its general counsel (as opposed to, for example, the Attorney General) to commence (*i.e.*, prepare and file) and prosecute (*i.e.*, represent the Commission before the court) the cases.

17. Likewise, the Legislature in Section 386.600 has stated that the Commission "may" sue for and recover all penalties or forfeitures incurred up to the time of commencing the action. To give effect to the use of the word "may" here, the Legislature has granted the Commission discretion to base its calculations on a shorter time period if it chooses. This language implies that the Commission need not pursue every day of a violation if penalties or forfeitures are calculated on a daily basis, but instead could choose to pursue a lesser amount.

18. In cases involving annual report violations of telecommunications companies, Section 392.210 states that the Commission "shall" recover the sum of one hundred dollars for every day that a company is in default "in an action brought by the commission in the name of the state of Missouri." This language ties in neatly with the language of Section 386.600. The latter section not only gives circuit courts jurisdiction over the Commission's claims, but also grants the Commission the discretion to bring a case involving penalties or forfeitures; then, if the Commission chooses to exercise its discretion by bringing such an action, Section 392.210 prescribes how it *must* be brought: by the Commission, and in the name of the State of Missouri.

Similar mandatory language in Section 386.600 prescribes that any case that is brought, must be brought by the Commission's general counsel.

D. The Commission Has No Explicit Directive To Prosecute Any Potential Statutory Violation To Its Ultimate Judicial Conclusion.

19. Whether the statutory word "shall" is mandatory or simply directory is primarily a function of context and legislative intent. *Farmers & Merchants Bank and Trust Co. v. Director of Revenue*, 896 S.W.2d 30, 32 (Mo.banc 1995). The Missouri Supreme Court has also held that "where a statute or rule does not state what results will follow in the event of a failure to comply with its terms, the rule or statute is directory and not mandatory." *State v. Tisius*, 92 S.W.3d 751, 770 (Mo. 2002). "'While the use of the word "shall" in a statute will generally be interpreted as mandatory ... such is not always the case.' " *Kersting v. Director of Revenue*, 792 S.W.2d 651, 653 (Mo.App. E.D. 1990); *State v. Conz*, 756 S.W.2d 543, 546 (Mo.App.W.D. 1988). The general rule in determining whether a statute is mandatory or directory is when a statute provides what results shall follow a failure to comply with its terms, it is mandatory and must be obeyed. *Rundquist v. Director of Revenue, State of Mo.* 62 S.W.3d 643, 646 (Mo.App. E.D. 2001), citing *Kersting, supra*. However, if the statute merely requires certain things to be done and nowhere prescribes results that follow, such statute is merely directory. *Id.* Where a statutory provision does not provide what results shall follow a failure to comply with its terms, it is generally held to be directory. *Id.*

20. The statutory burden tied to the use of the word "shall" in this case is placed upon the telecommunications company that has not complied with the statute. The Commission has not been directed that it "shall" bring the action, subject to a result that follows from a failure to bring the action. The repeated grants of Commission discretion elsewhere in Section 392.210.1, coupled with the lack of a direction to the Commission to bring cases seeking forfeitures

suggests that the use of the word “shall” by the Legislature in this setting is simply directory, and discretion to pursue actions in circuit court is vested in the Commission.

21. The power to resolve a lawsuit is inextricable from the power to bring that lawsuit. As noted in the italicized language in paragraph 14 above, powers fairly implied from statutes granting express powers are also available to public agencies. Although the statutory interpretive principle of *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another) could apply to prohibit relaxation of filing requirements and only permit either complete waiver or no waiver of any sort. However, the far more appropriate method of interpreting this discretionary language, taking into account the list of other discretionary options the Legislature has provided, is that the grant of the discretion to completely waive an annual report filing encompasses lesser powers such as the power to accept a filing late and not pursue the penalty or forfeiture for the term before the annual report was filed even if the late-filer admits its error. Accordingly, as the Commission unquestionably has the right and authority to bring actions for forfeitures and penalties against regulated utilities that violate its statutory provisions, and in light of the public interest that would be furthered by entering into a settlement relating to such violations, settlement is both authorized and supported by law, either before or on behalf of the Commission.

E. Public Policy Supports Commission Discretion.

22. It is worthy to note that the Commission has not previously pursued cases involving failures to file annual reports or pay assessments as low as below one dollar (based on estimates and not actual Statements of Revenue). Previous Commissions, as well as prior Legislatures, have not perceived that pursuit of these cases was mandatory (and, correspondingly, that no settlement was possible). In addressing a similar situation, where the

Tax Commission abruptly began to assess rural electric cooperatives after not doing so for twenty-three years without any change in governing law, the Missouri Supreme Court held that “[t]he administrative construction of its authority by the tax commission, coupled with the legislative acceptance of such construction, militate strongly against the conclusion that the commission should now assume to assess the relators as they do electric public utility companies. The statute under which the respondents propose to act is not so clear and free from doubt as to preclude the giving of weight to the long period of construction which it has received at the hands of the tax commission and the General Assembly.” *State ex rel. Howard Elec. Co-op. v. Riney*, 490 S.W.2d 1, 12-13 (Mo. 1973) (citations omitted). Certainly, “[e]stoppel does not apply to acts of government[.]” *State ex rel. Branum v. Board of Zoning Adjustment of City of Kansas City, Mo.*, 85 S.W.3d 35, 42 (Mo.App. W.D. 2002). Further, “an administrative agency is not bound by *stare decisis*.” *State ex rel. AG Processing, Inc. v. Public Serv. Comm’n et al.*, 120 S.W.3d 732, 736 (Mo.2003). Nevertheless, long-standing practice of the agency which has been condoned by the Legislature is entitled to some weight.

23. Moreover, Commission resolution at the administrative level furthers judicial economy. Settling cases that contain no factual disputes, especially if the defendants are seeking to leave Missouri, no longer do business in Missouri, and/or have no Missouri revenues, is likely to provide a more positive ultimate result than progressing through an already-overburdened judicial system that encourages settlement where possible.

24. Finally, settlement of a case resulting in voluntary certificate cancellation is in the public interest because it results in the departure from the State of Missouri of a telecommunications company that is no longer able to provide, nor desires to provide, telecommunications service to Missouri consumers. Maintaining a company on Commission

Tax Commission abruptly began to assess rural electric cooperatives after not doing so for twenty-three years without any change in governing law, the Missouri Supreme Court held that “[t]he administrative construction of its authority by the tax commission, coupled with the legislative acceptance of such construction, militate strongly against the conclusion that the commission should now assume to assess the relators as they do electric public utility companies. The statute under which the respondents propose to act is not so clear and free from doubt as to preclude the giving of weight to the long period of construction which it has received at the hands of the tax commission and the General Assembly.” *State ex rel. Howard Elec. Co-op. v. Riney*, 490 S.W.2d 1, 12-13 (Mo. 1973) (citations omitted). Certainly, “[e]stoppel does not apply to acts of government[.]” *State ex rel. Branum v. Board of Zoning Adjustment of City of Kansas City, Mo.*, 85 S.W.3d 35, 42 (Mo.App. W.D. 2002). Further, “an administrative agency is not bound by *stare decisis*.” *State ex rel. AG Processing, Inc. v. Public Serv. Comm’n et al.*, 120 S.W.3d 732, 736 (Mo.2003). Nevertheless, long-standing practice of the agency which has been condoned by the Legislature is entitled to some weight.

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24. Finally, settlement of a case resulting in voluntary certificate cancellation is in the public interest because it results in the departure from the State of Missouri of a telecommunications company that is no longer able to provide, nor desires to provide, telecommunications service to Missouri consumers. Maintaining a company on Commission

rolls when it is no longer a viable concern within the state confuses and potentially misleads the public, and creates a waste of state resources through ongoing mailings, contacts, and other regulatory activities designed for a company that is still providing regulated services.

Conclusion

25. The Commission's approval of the Agreement signed by Staff and Lockheed Martin GTS will encourage other companies to propose settlement of cases before the Commission, reducing administrative burdens both on the Commission and on the circuit court system as cases progress to higher levels. Such resolutions are in the public interest if they resolve matters that cause no harm to the public, such as this case, and result in fair, appropriate and proportionate treatment. Thus, for all the reasons discussed herein, the Commission is urged to approve the Agreement between Staff and Lockheed Martin GTS.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

David A. Meyer
Associate General Counsel
Missouri Bar No. 46620

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