BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

APPLICATION FOR REHEARING AND RECONSIDERATION

COMES NOW Respondent St. John's Regional Medical Center ("St. John's), by and through counsel, pursuant to Section 386.500 RSMo 2000[1] and 4 CSR 240-2.160, and for its *Application For Rehearing and Reconsideration*, respectfully states as follows:

INTRODUCTION

1. On July 6, 2004 the Commission in this case issued its *Determination On The Pleadings And Order Directing General Counsel To Seek Penalties* ("Order"). This Order bore an effective date of July 16, 2004. This *Application For Rehearing and Reconsideration*, therefore, has been timely filed pursuant to Section 386.500 and 4 CSR 240-2.160.

2. The Commission's Order finds St. John's--a non-profit Missouri hospital which happens to hold a Shared Tenant Services ("STS") certificate--in violation of Section 392.210.1 and 4 CSR 240-3.540(1) for failing to timely file its year 2002 PSC Annual Report and directs the Commission's General Counsel to seek statutory penalties in excess of $36,000.00 in a circuit court of proper venue for such violation.

[1] All statutory references are to RSMo 2000 unless otherwise specified.

3. The actual St. John's Annual Report in question is a simple, straight-forward seven page document which, after excluding the Commission-provided boilerplate standard language, contains only St. John's regulatory contact information and the fact that St. John's received $4,319.00 in annual revenues for year 2002 relating to its certificated STS operations.[2] A copy of the Annual Report is attached hereto and incorporated herein by reference as **Attachment A**.

4. The Commission's Order is based solely "on the pleadings" with the Commission acting *sua sponte* without the moving party (Staff) filing any request or motion for a judgment on the pleadings.[3] After citing its own rule allowing such a summary disposition *sua sponte*, the Commission concludes on page 2 that "the public interest favors a quick and efficient resolution of this matter". The pleadings upon which the Commission's Order is based apparently consist solely of the Staff's initial *Complaint* and St. John's *Answer To Complaint*. Nowhere in the Commission's Order does the Commission address, mention, or even indicate that it considered the affirmative defenses (or for that matter any mitigating factors) raised in St. John's *Answer To Complaint* or in St. John's *Motion To Dismiss* filed on April 16, 2004.[4]

5. The Commission's Order is completely silent and provides no justification, rationale, or reasoning as to why the Commission, at this particular time and without prior warning or notice, has reversed years of past Commission practice in the way in which it has heretofore dealt with and enforced Section 392.210.1, and why, the

---

[2] As indicated in its *Answer* and *Motion To Dismiss*, St. John's operates on a purely non-profit basis. St. John's actually received **no** net profit from its provision of STS-like services in 2002 (see footnote 9 and Section III below).

[3] The record reflects that Staff's filings in this case consisted solely of its initial *Complaint* and a *Motion For Establishment of Procedural Schedule*, the latter apparently being made moot by virtue of the Order.

[4] The Commission's Order does not overrule St. John's *Motion To Dismiss*, let alone note that it was filed or even considered.

Commission in this case specifically directed its Staff to refuse any offer of settlement at some time prior to the convening of the prehearing conference held on April 1, 2004. (Tr**.** at 5). The relevant page of the transcript is attached hereto and incorporated herein by reference as **Attachment B**.

6. As more specifically set out below, the Commission's Order is arbitrary, capricious, an abuse of discretion, unreasonable, unjust, unlawful, violative of Article I Section 21 of the Missouri Constitution prohibiting excessive fines, and deprives St. John's of its rights to due process and equal protection as guaranteed by the Missouri[5], the United States Constitution[6], and even provided for in the Commission's own procedural rules and past practice[7]. It likewise is not based upon competent and substantial evidence on the record as a whole and fails to provide a reviewing court with findings of facts and conclusions of law sufficient to determine the Commission's rationale and thought process leading to its decision. *State ex rel. Noranda Aluminum, Inc. v. Public Service Commission, 24 S.W.3d 243* (Mo. App. WD 2000); *State ex rel. A.P. Green Refractories et al. v. Public Service Commission*, 725 S.W.2d 835 (Mo. App. W.D. 1988). Moreover, the Commission's entire approach in this proceeding in no way has been substantially justified under the circumstances and its actions reflect an abdication of its lawful and obligatory role as an unbiased decision maker in this regulatory proceeding--where as is the case in all Commission proceedings--the Commission is supposed to balance the interests of the public with the interests of the regulated entity, in this case St. John's.

---

[5] Article I, Section 2; Article I, Section 10.
[6] Amendments 5 and 14.
[7] 4 CSR Chapter 2. Staff indicated it was precluded from entertaining settlement offers even though the Commission's own March 23, 2004 *Order Setting Prehearing Conference* clearly contemplated the possibility of settlement negotiations.

I. THE COMMISSION ERRED IN FAILING TO CONSIDER OR ADDRESS IN ITS ORDER ST. JOHN'S UNIQUE NATURE AND SITUATION.

7. St. John's is unlike other Commission regulated providers of telecommunications services (incumbent local exchange carriers, interexchange carriers, competitive local exchange carriers) or even other certificated STS providers which operate *for-profit*. St. John's does not provide monopoly or competitive basic local service, exchange access service, or interexchange service. Nor does its purported STS service even rise to the level of the services provided by other certificated STS providers, such as those provided by, for example, GE Capital-ResCom, L.P. Case No. TA-95-125. St. John's is a Chapter 355 Missouri non-profit hospital, located in Joplin, Missouri, which during the 2002 reporting year allowed three physician offices on its hospital campus to utilize its private hospital telecommunications system[8] without St. John's receiving any profit whatsoever and only being reimbursed for St. John's actual costs.[9] St. John's allowed these private doctors' offices on its campus to use its system for convenience, not because St. John's desired to engage in the telecommunications business. Initially St. John's did not believe it needed an STS certificate for such arrangements, but acquiesced to seeking and obtaining an STS certificate in Case No. TA-98-121 in order to avoid the costs of possible litigation over whether what St. John's was doing in fact even constituted "true" STS under Missouri law.

---

[8] "Private telecommunications system" is defined in Section 386.020(41).

[9] One doctor's office was on the hospital's network only so he could make long distance calls and the cost of those calls were billed back to the doctor's office at St. John's cost. A second doctor's office had its own long distance connections but utilized 4-digit dialing on St. John's network to dial the hospital and to make local calls for which there was no charge by St. John's. The third doctor's office had its own phone system but had a T-1 connection to St. John's system, over which the office had 4-digit dialing to the hospital, local calls (both at no charge) and long distance (which were billed back at cost). This office no longer uses St. John's system for long distance.

8. As indicated in its *Answer To Complaint* and *Motion To Dismiss*, St. John's failure to timely file its year 2002 Annual Report was wholly unintentional, inadvertent and due to an administrative oversight. The record before the Commission contains no allegation or evidence to the contrary. It likewise is uncontested in the record that St. John's acted promptly to rectify its oversight once it actually received notice of its administrative oversight. The Commission inexplicably has chosen to ignore these facts.

9. While Staff first claimed otherwise in its *Complaint*, in its subsequent *Answer To Complaint* and *Motion To Dismiss*, St. John's stated that it never received the February 3, 2003 letter from the Commission's Executive Director notifying St. John's that it was out of compliance but rather first became aware of the problem when Staff later filed its *Complaint*. *See, Answer To Complaint*, paragraph 7. Presumably, had St. John's received and responded to that February 3, 2003 letter, Staff would not have filed its *Complaint* and St. John's would not now be facing the possibility of over $36,000.00 in statutory penalties for the some 367 days the Commission now finds that St. John's delayed in making its required filing. There is no factual basis to conclude otherwise. The Commission in its Order, however, has elected to ignore St. John's allegations as to this potentially exculpatory fact or even to accord St. John's the benefit of the doubt despite St. John's prompt response to cure the problem once it had finally received notice.

10. St. John's situation is in any event unique and should be easily distinguished from *for-profit* Commission-certificated carriers (including other STS providers) who may have failed, without good cause or without good intent, to file their respective annual reports in a timely manner. It is unjust, unreasonable, arbitrary, and an abuse of agency

discretion for the Commission to wholly ignore and fail take into account St. John's unique factual situation and to summarily lump St. John's into the same boat as part of the Commission's new-found, unexplained rigorous enforcement of Section 292.210.1.

11. Moreover, it is unjust, unreasonable, arbitrary, unlawful and an abuse of discretion for the Commission in its Order to seek to impose statutory penalties on St. John's in excess of $36,000.00 when: St. John's receives absolutely no profit from services provided pursuant to its STS certificate; St. John's failure to timely file was inadvertent and unintentional and could have been mitigated had St. John's received the Commission's February 3, 2003 letter; St. John's acted promptly to rectify the situation once it became aware of it; and St. John's 2002 Annual Report, once filed, consisted of only seven pages, with most of those pages containing mostly Commission-supplied boilerplate language. Even if St. John's arguably should be subject to *some* financial penalty for its inadvertent failure to file, the penalty sought by the Commission should be reasonable, *proportional* to the severity of the violation, and the Commission's decision to enforce such a penalty--like all Commission decisions--must at least be intended to serve some public interest goal. Under the circumstances presented, as a matter of law the imposition of statutory penalties of over $36,000.00 is excessive on its face.[10] The legitimate regulatory need to obtain the St. John's-specific information required in St. John's Annual Report (which is minimal), or attempting to somehow punish or make an example of St. John's, hardly can serve as a legitimate or reasonable regulatory justification for the Commission seeking the *maximum* penalty allowed by the statute.

[10] Missouri Constitution Article I, Section 21 prohibits excessive fines as does the 8th Amendment to the U.S. Constitution. "Fines" are defined in Black's Law Dictionary as "a pecuniary criminal punishment or **civil penalty payable to the public treasury**". "Excessive fines" are further defined as "a fine that is unreasonably high and disproportionate to the offense committed."

Nor is the Commission's action justified in terms of the need to calculate PSC annual assessments because the Commission obtains the revenue information needed to prepare its annual assessments from separate documents (Statements of Revenue) which are separately filed pursuant to Section 386.370.5. As to any rational justification, other than "the statute permits it", the Commission's Order is woefully silent.

12. To the extent the Commission's Order is intended to somehow punish St. John's, the Commission should recognize that St. John's has been forced to already incur significant costs for the services of legal counsel; first due to the formal filing of Staff's Complaint, next the inability of St. John's to reach a settlement and quickly dispose of the case due to Staff's refusal to consider settlement (see discussion below), and now the need to file this *Application For Rehearing and Reconsideration* due to the Commission's Order. If the Commission's regulatory goal truly was to insure that St. John's filed its 2002 Annual Report so that the Commission would have the information contained therein, and that St. John's would file subsequent annual reports in a timely manner, then the approach taken by the Commission in this case has been neither necessary nor substantially justified. Historically, tardy annual report problems which might have arisen prior to the beginning of 2004--even those involving *for-profit* telecommunications companies and other types of public utilities--have been properly and adequately handled informally by the Commission without the need for the docketing of contested cases and the creation of multiple billable hours for attorneys which necessarily then result. The Commission has further compounded the problem in this case by mandating at the very outset by *fiat* that the Staff be precluded from entertaining any offers of settlement from St. John's.

II. THE COMMISSION ERRED IN NOT EXERCISING REASONABLE DISCRETION WITH RESPECT TO THE PARTICULAR FACTS IS CASE AND IN ORDERING ITS STAFF TO NOT ENTERTAIN ANY SETTLEMENT OFFER PRIOR TO THE ISSUANCE OF THE COMMISSION'S ORDER.

13. While at no place explained, the Commission's Order seems to imply that the Commission either believes that it need not exercise any discretion, or that somehow Section 392.210.1 precludes the Commission from exercising any discretion, when it comes to the question of Commission's enforcement of its annual report filing requirements. If so, and in either case, the Commission is in error.

14. The Commission's own General Counsel's office, in Case No. TC-2004-0415 (Lockheed Martin Global) has publicly filed a twelve page legal analysis explaining that the Commission lawfully does have such discretion both in terms of accepting a proposed settlement under and in its enforcement powers generally relating to Section 392.210.1. A copy of this analysis is attached hereto and incorporated herein by reference as **Attachment C**. The Commission should follow the advice of its own General Counsel's office and is in error to the extent it has refused to exercise its reasonable discretion in this proceeding.

15. Section 392.210.1 by its own terms clearly grants the Commission the discretion to waive the application and enforcement of the statute if it so chooses and if to do so would be in the public interest.[11] To the extent that the Commission has interpreted Section 392.210.1 as somehow legally mandating and requiring the result reached in the Commission's Order in this case, the Commission is in error. To the extent that the Commission did not feel the need as the impartial decision maker to exercise any

[11] The Commission likewise has the discretion to waive any of its own rules**.** 4 CSR 240-2.060(4).

discretion on a case-by-case basis under the statute, and more specifically in this case, the Commission likewise is in error. Failure to exercise discretion in the proper circumstances amounts to an abuse of discretion. Abuse of discretion means an untenable judicial act that defies reason and works an injustice. *Jennings v. City of Kansas City*, 812 S.W.2d 724, 736 (Mo. App. WD 1991). Failure to do so without any explanation or justification, especially when contrary to past agency action in similar cases, amounts to agency action which is both arbitrary and capricious under the law. The Commission, under the circumstances, should simply waive the application of the statute and rule and accept St. John's late-filed 2002 Annual Report for good cause. This would efficiently dispose of the case and not be contrary to the public interest.

16. The Commission's Order is silent, but the record in this case clearly reflects that at some point prior to the prehearing conference in this case the Staff (supposedly the moving party complainant) apparently had been privately directed by the Commission (the presumably impartial decision maker) to **not** entertain any offers of settlement by St. John's. Tr. at 5. All attempts by St. John's counsel to discuss the possibility of settlement of this matter both then and subsequently have been met with claims that the Staff could only discuss settlement after the Commission issued its Order, and that such discussions would only occur first at the circuit court level once the General Counsel had been directed to seek statutory penalties. If the Commission as the decision maker and the Staff as the moving party do not have the discretion to entertain or conclude a settlement in these types of cases prior to the Commission issuing its order, then it is hard to see how the Commission's General Counsel can have the lawful authority to settle the

matter on behalf of the Commission by delegation once it falls within the jurisdiction of the circuit court.[12]

17. Moreover, St. John's, and all parties appearing before the Commission, are legally entitled by due process and equal protection to a fair regulatory and adjudication process, which necessarily includes the right to attempt to settle disputes[13] and the right to an impartial and unbiased decision maker. *Jones v. State Dept. of Public Health and Welfare,* 354 S.W.2d 37, 40 (Mo. App. 1962); *Union Electric Company v. Public Service Commission,* 591 S.W.2d 134 (Mo. App. WD 1979).

18. By directing the Staff to not entertain any settlement offer from St. John's prior to the Commission actually considering the case and prior to the issuance of the Commission's Order, the Commission inexplicably and without prior notice has wrongfully precluded St. John's the opportunity to resolve a contested matter before the Commission without further expense and commitment of resources, an opportunity granted and recognized by the Commission's own rules and by past practice in all contested Commission cases. It also has denied St. John's the fundamental right to an impartial and unbiased decision maker as obviously the Commission had already made up its mind as to the disposition of this matter as of the date St. John's filed its 2002 Annual Report, if not before. Nothing in the Commission's Order compels a contrary conclusion. As a matter of judicial economy, sound public policy, and fundamental fairness, the Commission should be encouraging resolution of matters before such matters end up in court, not taking actions which insure the creation of court proceedings at the very outset. If what the the Commission is attempting to do here is to seek judicial

[12] *See* Section 386.240. The Commission must first possess authority before it can delegate it.
[13] 4 CSR 240-2.115.

guidance with respect to Section 392.210.1, St. John's does not wish to be "the test case" and it is simply unfair for the Commission to force that role and related expense on St. John's.

19. The Commission's Order is silent in attempting to offer any rationale whatsoever as to why the Commission at this particular point in time, and without prior warning, has found that it must apply the penalty provisions of Section 392.210.1 with such blind regulatory vigor—let alone in such a way as to preclude the option of any settlement before the case reaches the circuit court level. Section 392.210.1 has been on the books and has remained virtually unchanged since 1939. It is clear from Commission records that Section 392.210.1 rarely (if ever) has been invoked by past Commissions to the level of court action, especially in the manner in which it is being invoked in this case, and as here, without even the slightest attempt at explanation of the Commission's regulatory rationale in its Order.

III. EVEN IF ST. JOHN'S FAILED TO FILE ITS 2002 ANNUAL REPORT IN A TIMELY MANNER AND FOR SOME REASON SUCH FAILURE CANNOT BE REASONABLY OR LAWFULLY EXCUSED BY THE EXERCISE OF THE COMMISSION'S DISCRETION, THE COMMISSION ERRED AS A MATTER OF LAW IN CONCLUDING THAT ST. JOHN'S IS A "TELECOMMUNICATIONS COMPANY" AND THAT THEREFORE IT WAS SUBJECT TO SECTION 392.210.1 IN THE FIRST INSTANCE.

20. St. John's does not dispute that as a certificated STS provider it is subject to the Commission's jurisdiction pursuant to **Section 392.520**. However, both the Staff in its Complaint and the Commission in its Order have erroneously assumed--without any

statutory analysis--that just because St. John's is subject to Commission *jurisdiction*, St. John's necessarily must be a "telecommunications company"[14] and a "public utility"[15], as those terms are defined in Section 386.020. The Staff and the Commission then further wrongly assume and conclude, that therefore, Section 392.210.1 and 4 CSR 240-3.540(1) necessarily apply to St. John's.

21. In paragraph 1 of its Answer To Complaint, St. John's at its very first opportunity in this proceeding denied Staff's allegation that St. John's was a "telecommunications company" and a "public utility" as those terms are defined in Section 386.020. Staff filed no responsive pleading addressing this fundamental legal issue raised by St. John's denial. The Commission in its Order then simply ignored this issue and instead summarily concluded in its Conclusions of Law that "St. John's Regional is a telecommunications company and is therefore subject to the annual report requirement" of Section 392.210.1 and 4 CSR 240-3.540(1), furthermore finding St. John's had violated same and directing its General Counsel to seek the maximum statutory penalties in circuit court. The Commission's statutory analysis is fundamentally in error.

22. First, Staff's allegation that St. John's somehow is a "public utility" is both wrong and in any event wholly irrelevant. Section 392.210.1 and 4 CSR 240-3.540(1) by their own terms apply *only* to "telecommunications companies" and they lawfully can be invoked only against "telecommunications companies". While by definition all "telecommunications companies" necessarily are "public utilities", all "public utilities" are not "telecommunications companies". Accordingly, this statute and this rule do *not*

[14] Section 386.020(51)
[15] Section 386.020(42)

apply to all "public utilities" (e.g. electrical corporations, gas corporations, water corporations) nor for that matter to other entities which might otherwise be regulated by the Commission but which do not fall within the statutory definition of a "public utility" (e.g. municipally-owned natural gas systems, manufactured housing dealers). Even if St. John's was a "public utility", it would not be subject to Section 392.210.1 and 4 CSR 240-3.540(1) unless it also was a "telecommunications company".

23. The term "telecommunications company" is statutorily defined. If St. John's does not fall within the statutory definition of a "telecommunications company", it obviously cannot be subject to Section 392.210.1 and 4 CSR 240-3.540(1).[16]

24. An entity only can be a "telecommunications company" if it first owns, operates, controls or manages "facilities" used to provide "telecommunications service". Section 386.020(51).

25. The definition of "telecommunications facilities", Section 386.020(52), refers only to facilities used to provide "telecommunications service". "Private shared tenant services", as defined by Section 386.020(40), by definition are not the same as "telecommunications services", as defined by Section 386.020(53). If anything at all, St. John's is providing *only* STS, or "private shared tenant services".

26. Even assuming, *arguendo*, that the services St. John's provides (or provided in the period covered by the 2002 Annual Report) fall within the definition of "telecommunications service" under Section 386.020(53), such service by statute would in addition have to be "**for hire, sale or resale**". Section 386.020(51). The provision of STS (even for a profit) clearly does *not* fall within the statutory definition of *resale* of telecommunications service. Section 386.020(46). Accordingly, St. John's would have

[16] It also obviously cannot by definition be a "public utility".

to be providing service for sale or for hire in order to be deemed a "telecommunications company", which as already discussed above, as a factual matter it has not ever done and does not do. Allowing three doctor's offices on the St. John's campus to connect to and use St. John's private telecommunications system at cost, without St. John's making a profit, is not "hire" or "sale".

27. For these reasons, and as previously stated in its *Answer To Complaint*, St. John's is not by definition a "telecommunications company", and therefore, cannot lawfully be subject to the penalty provisions of Section 392.210.1 or 4 CSR 240-3.540(1). It likewise cannot be subject to Commission jurisdiction pursuant to Section 386.250(2) notwithstanding the Commission's conclusion to the contrary on page 3 of its Order. It should be noted that the Commission in its original Order Granting Certificate in Case No. TA-98-121 never purported to declare St. John's to be a "telecommunications company", but rather only a *certificated provider of STS.* This approach is consistent with all other past STS certificate cases reviewed by counsel and is even consistent with the Commission's exclusion of STS providers from the requirements of the state universal service fund which are otherwise applicable to all "telecommunications companies". *See, e.g., In the Matter of an Investigation into Various Issues Related to the Missouri Universal Service Fund*, Case No. TO-98-329 ("Consistent with the low-income/disabled fund proposal, the Commission finds that all carriers except payphone providers, shared tenant service *providers* and carriers with annual net intrastate jurisdictional revenues of less than $24,000 should be assessed.") If nothing else, this shows that the Commission in the past has at least recognized that STS providers are not the same, for regulatory purposes, as "telecommunications companies",

and that a "one size fits all" approach is not in the public interest. The same should hold true for purposes of Section 392.210.1.

28. St. John's merely holds a certificate of service authority for the provision of STS, as defined by Section 386.020(40), and it comes under the Commission's regulatory jurisdiction only by virtue of Section 392.520. This statute clearly states that providers of STS shall be subject to minimum regulation. It is hard to see how subjecting St. John's non-profit operations to over $36,000.00 in penalties for an unintended tardiness in filing seven pieces of paper--which contained virtually nothing of any true regulatory significance--can be consistent with the spirit and intent of Section 392.520 and the overall regulatory scheme set forth in Chapters 386 and 392. It is inconsistent with the notion of "minimal regulation" and the result of the Commission's Order, if allowed to stand, should on its face shock the conscience.

IV. CONCLUSION

Even if St. John's is incorrect in its statutory interpretation set forth in Section III above and St. John's is as a matter of law a "telecommunications company" subject to Section 392.210.1, the unique facts of this case make the enforcement of Section 392.210.1 to its fullest extent against St. John's wholly inappropriate and unreasonable. St. John's submits that it has, even on the current record before the Commission, demonstrated good cause under the Commission's own waiver rule as to why imposition of any statutory penalty is unwarranted. Waiver of the enforcement against St. John's of Section 392.210.1 in its entirety would be entirely consistent with years of past Commission practice, efficient, reasonable and not contrary to the public interest. If the Commission nevertheless believes that some amount of statutory penalty is called for, St.

John's should at minimum be given the opportunity--before the necessity of additional costly court proceedings or even further formal proceedings before the Commission--to reach some form of reasonable settlement.

WHEREFORE, for the reasons stated hereinabove Respondent St. John's Regional Medical Center respectfully asks that the Commission: 1) vacate its July 6, 2004 *Determination On The Pleadings And Order Directing General Counsel To Seek Penalties*; 2) issue an Order On Rehearing finding that Respondent as an STS provider is not subject to Section 392.210.1 and 4 CSR 240-3.540(1) as a matter of law, accepting the filing of Respondent's 2002 Annual Report out of time for good cause, and finding that the need for any further proceedings with respect to this matter are unwarranted and not in the public interest; or 3) in the alternative, issue an Order on Rehearing waiving the application of Section 392.210.1 and 4 CSR 240-3.540(1) for good cause with respect to Respondent, accepting the filing of Respondent's 2002 Annual Report out of time for good cause, and finding that the need for any further proceedings with respect to this matter are unwarranted and not in the public interest.

Respectfully submitted,

/s/Charles Brent Stewart

Charles Brent Stewart, MoBar#34885
STEWART & KEEVIL, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, Missouri 65203
(573) 499-0635
(573) 499-0638 (fax)
Stewart499@aol.com

ATTORNEY FOR RESPONDENT
ST. JOHN'S REGIONAL MEDICAL CENTER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent this date to counsel for all parties of record in Case No. TC-2004-0406 by depositing same in the United States mail, first class postage prepaid, by electronic mail transmission, or by hand-delivery, this 14th day of July, 2004.

/s/ Charles Brent Stewart

_____