

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
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 2000¹ and 4 CSR 240-2.160, and for its *Application For Rehearing and Reconsideration*, respectfully states as follows:

1. On September 30, 2004, the parties jointly filed a Stipulation of Facts.
2. On October 19, 2004 the Commission issued its *Order Directing General Counsel To Seek Penalties* which bore an effective date of October 29, 2004. This *Application* has been timely filed prior to the effective date of the *Order* pursuant to Section 386.500 RSMo 2000.
3. For purposes of this *Application For Rehearing and Reconsideration* of said *Order*, Respondent incorporates herein, as if more fully set out verbatim, Respondent's initial *Application For Rehearing and Reconsideration* which was filed on July 14, 2004, and thereby here repeats all the arguments contained therein and makes same applicable to said *Order*.
4. In addition, said *Order* is unjust, unlawful, unreasonable, an abuse of discretion, arbitrary and capricious, and not substantially justified because: a) it fails to

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

adopt as findings of fact all the stipulated relevant facts contained in the parties' joint Stipulation of Facts, specifically those which are exculpatory and which support a conclusion of law that Respondent is not a "telecommunications company" under the applicable statutes; b) it erroneously omits and wholly ignores in its statutory analysis the applicable statutory definition sections of Section 386.020; and c) it erroneously continues to confuse the issue of Commission jurisdiction over Respondent with the entirely separate issue of whether Respondent, as a non-profit enterprise, is a "telecommunications company" as defined by the applicable provisions of Section 386.020, and therefore whether Respondent is subject to the annual report penalty provisions of Section 392.210.1 RSMo 2000.

5. Simply put, the Commission's statutory analysis is both wrong and superficial. The Commission on page two of its Order concludes that it has jurisdiction over Respondent and all STS providers under Section 392.520 RSMo 2000. Respondent does not contest that. However, the Commission may well have jurisdiction over an entity or over the services it provides but that in and of itself does not make that entity, necessarily, a "telecommunications company". As fully discussed in Respondent's July 14, 2004 filing, the applicable provisions of Section 386.020 define that term "telecommunications company" and are controlling. While a *for-profit* entity providing STS may well be a "telecommunications company", and be therefore subject to the penalty provisions of Section 392.210.1, a non-profit entity like Respondent does not meet the statutory definitions.

6. Clearly only "telecommunications companies" fall under the penalty provisions of Section 392.210.1 and under the provisions of Section 392.390. Neither of

these statutory sections, cited by the Commission, defines the term “telecommunications company”. While it may be true that it was and is the Commission’s intent as a matter of policy under Section 392.520 that all *STS providers*² be required to file annual reports, the Commission cannot do or justify by rule or otherwise what is not permitted by statute. The cited Commission’s rule, 4 CSR 240-3.540(1) makes absolutely no mention of “shared tenant services providers”. To the extent the Commission in that rule is simply assuming that all STS providers are “telecommunications companies”, the rule nevertheless cannot override or broaden the scope of the statutory definitions and cannot form a legal basis for imposing statutory penalties on Respondent for failing to timely file its annual report.

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* and its October 19, 2004 *Order Directing General Counsel To Seek Penalties*; 2) grant Respondent’s April 16, 2004 *Motion To Dismiss* and issue an Order On Rehearing finding that Respondent is not subject to Section 392.210.1 and 4 CSR 240-3.540(1) as a matter of law, or in the alternative, 3) 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.

² Section 392.520 RSMo 2000 never declares STS providers necessarily to be telecommunications companies and in fact uses the phrase “providers”.

Respectfully submitted,

/s/Charles Brent Stewart

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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 27th day of October, 2004.

/s/ Charles Brent Stewart
