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April 16, 2004

FILED<sup>2</sup>

APR 16 2004

Missouri Public  
Service Commission

Missouri Public Service Commission  
Attn: Secretary of the Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

Re: Case No. TC-2004-0406  
St. John's Regional Medical Center

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies each of Respondent's Motion To Dismiss and Respondent's 2002 Annual Report. A copy of this filing has been sent this date to counsel for all parties of record.

Sincerely,

  
Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record  
Gina Atteberry

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

APR 16 2004

Missouri Public  
Service Commission

The Staff of the Missouri Public Service )  
Commission, )  
Petitioner, )  
v. )  
St. John's Regional Medical Center, )  
Respondent. )

Case No. TC-2004-0406

**MOTION TO DISMISS**

COMES NOW Respondent St. John's Regional Medical Center ("St. John's), by and through counsel, and for its Motion To Dismiss respectfully states as follows:

1. On February 17, 2004 the Staff filed a complaint with the Commission alleging, *inter alia*, that St. John's had failed to file its 2002 annual report and that St. John's had not responded to a February 3, 2003 letter from the Commission's Executive Secretary respecting said annual report.

2. On February 20, 2004 the Commission issued its Notice of Complaint.

3. On March 16, 2004 St. John's filed its Answer To Complaint through its general business counsel, Spencer, Scott & Dwyer, P.C. of Joplin, Missouri.

4. On or about the same time, St. John's general business counsel contacted and retained undersigned counsel as special Commission regulatory counsel for purposes of this proceeding.

5. On March 23, 2004 the Commission issued its *Order Setting Prehearing Conference and Requiring Filing of Procedural Schedule*. Also on this date undersigned counsel filed his written entry of appearance on behalf of St. John's.

6. Pursuant to the Commission's procedural order, undersigned counsel appeared on behalf of St. John's at the prehearing conference on April 1, 2004. At the prehearing conference, undersigned counsel informed the regulatory law judge and counsel for the Staff that St. John's was in the process of completing its 2002 and 2003 annual reports and that same would be filed as soon as they were completed. Staff informed undersigned counsel, however, that Staff had not been empowered to negotiate a settlement of this case regardless of any actions taken by St. John's. Accordingly, on April 8, 2004 the Staff with the concurrence of undersigned counsel filed its Motion For Establishment of Procedural Schedule in compliance with the Commission's earlier order.

7. On April 15, 2004 St. John's timely filed its 2003 annual report with the Commission.

8. Pursuant to the instructions of the regulatory law judge, undersigned counsel has this date filed St. John's 2002 annual report in this case contemporaneous with this Motion To Dismiss.

9. Unlike traditional telecommunications companies regulated by the Commission, St. John's is a Missouri not-for-profit hospital and its personnel are not generally familiar with Commission procedures or rules. St. John's holds a shared tenant services ("STS") certificate only because three independent physician tenants of a St. John's building on its hospital campus currently use some form of St. John's-supplied telecommunications lines or service. St. John's pays the overall monthly phone charges and is then reimbursed by the physicians for their respective phone costs. As a not-for-profit entity, **St. John's makes no profit on the STS services it provides** and anti-

kickback and Stark laws require that St. John's not provide these physicians with any discounts on the phone services used. In fact, St. John's has been phasing out all use of St. John's phone lines by independent physicians and anticipates that within six months St. John's will no longer be providing STS. Once St. John's ceases to provide STS service, it will seek to have its certificate canceled.

10. For reasons unknown to St. John's, no one internally at St. John's has any record of receiving any correspondence relating to the past due 2002 annual report until the Notice of Complaint was received by St. John's registered corporate agent.

11. As indicated in its Answer To Complaint, in any event St. John's failure to submit its 2002 annual report on or before the due date was completely unintentional and was caused by an administrative oversight of personnel not generally familiar with the Commission's procedures, not by any desire or intent to ignore any lawful requirements of the Commission.

12. Upon first realizing that its 2002 annual report was past due, and that its 2003 annual report was due on April 15, 2004, St. John's immediately took steps to complete and file both reports and to comply with all Commission orders issued in this case.

13. As both its 2002 and 2003 annual reports have now been filed, St. John's submits that the subject of the Staff's complaint has been satisfied and that the case should be dismissed. Proceeding to hearing now would only generate unnecessary costs for, and unnecessarily burden the resources of, both St. John's and the Commission. Moreover, imposition of any monetary penalties for failure to file its 2002 annual report--while perhaps warranted in the case of similarly situated for-profit telecommunications companies who willfully or repeatedly ignore Commission requirements--under the

circumstances here would not be a fair and just disposition of this matter. St. John's already has incurred not insignificant legal costs with respect to this matter.

14. In order to preserve its legal rights, should the Commission for some reason reject this Motion To Dismiss and seek to impose monetary penalties, St. John's then renews its request for mediation as contained in its Answer and accordingly moves the Commission to temporarily suspend any procedural schedule currently set or proposed in this case.

WHEREFORE, for the reasons hereinabove stated Respondent St. John's Regional Medical Center respectfully moves the Commission to: 1) accept the filing of Respondent's 2002 annual report out of time; 2) dismiss the Staff's complaint as the substance of said complaint has now been satisfied; and 3) forego any further proceedings or imposition of monetary penalties with respect to this matter.

Respectfully submitted,

  
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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 16<sup>TH</sup> day of April, 2004.

