

THE **STOLAR**  
PARTNERSHIP LLP  
ATTORNEYS AT LAW

LISA LANGENECKERT  
(314) 641-5158

April 28, 2004

**FILED**

APR 29 2004

VIA OVERNIGHT MAIL

Executive Secretary  
Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65105

**Missouri Public  
Service Commission**

Re: Staff v. St. John's Mercy Hospital, Case No. TC-2004-0407

Dear Mr. Roberts:

I am enclosing the original and eight copies of the Motion to Dismiss filed on behalf of St. John's Mercy Hospital in the above-referenced matter. I would appreciate your bringing this filing to the attention of the Commission.

Yours very truly,



Lisa C. Langeneckert

Enclosures (9)

cc/enc: All parties of record

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

**FILED**

**APR 29 2004**

**Missouri Public  
Service Commission**

The Staff of the Missouri Public Service )  
Commission, )  
 )  
Complainant, )  
 )  
v. )  
 )  
St. John's Mercy Hospital, )  
 )  
Respondent. )

Case No. TC-2004-0407

**ST. JOHN'S MERCY HOSPITAL MOTION TO DISMISS**

COMES NOW, St. John's Mercy Medical Center d/b/a St. John's Mercy Hospital ("St. John's Mercy Hospital"), a not-for-profit Missouri corporation, and asks this Commission to dismiss the complaint filed in this case and waive any penalties under Section 392.210.1 RSMo, and as allowed by Section 392.515.1. In support thereof St. John's Mercy Hospital states as follows:

1. St. John's Mercy Medical Center has a hospital and office building located in Washington, Missouri (hereinafter referred to as "St. John's Mercy Washington"). St. John's Mercy Medical Center also maintains a major hospital and other related facilities located in St. Louis County in the city of Creve Coeur, Missouri (hereinafter referred to as "St. John's Mercy Creve Coeur").

2. On May 12, 1999, the Public Service Commission ("Commission") granted the Application of St. John's Mercy Washington for certificate of service authority to provide Shared Tenant Services ("STS") at St. John's Mercy Washington.

3. On February 17, 2004, the Commission Staff filed its Complaint against St. John's Mercy Washington for failure to file a 2002 Annual Report;

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

5. On March 23, 2004, St. John's Mercy Washington filed its Answer to Complaint.

6. On March 24, 2004 the Commission issued its Order Setting Prehearing Conference and Requiring Filing of Procedural Schedule.

7. On April 2, 2004 undersigned counsel filed entries of appearance on behalf of St. John's Mercy Washington.

8. On April 13, 2004 St. John's Mercy Washington filed its 2002 and 2003 annual reports in this case.

9. Section 392.210.1 RSMo relating to filing of annual reports states that the Commission "shall furnish a blank form for such annual reports to every telecommunications company required to make same." To the knowledge of our client, St. John's Mercy Washington received no such form or any other notification from the Commission that said filing was due.

10. The Complaint states that its contact information for St. John's Mercy Washington is:

St. John's Mercy Hospital  
615 S. New Ballas Road  
Creve Coeur, MO 63141

Complaint at 1.

11. The Commission's Complaint did not list a contact person at St. John's Mercy Washington, despite the fact that David Conover was listed as the St. John's

Mercy Washington contact in its Application filed on March 30, 1999 for the Certificate which is the basis for this Complaint. A copy of the Application of St. John's Mercy Washington is attached as Exhibit A (Case No. TA-99-417). St. John's Mercy Creve Coeur employs over 5,000 people at its 615 S. New Ballas Road address—the address listed on the Commission's Complaint--and a reasonable person could not expect that an envelope with no contact name or department would reach its intended recipient.

12. The Complaint states that the Company does not have a registered agent (Complaint at 1). However, a photocopy of the Secretary of State's webpage for St. John's Mercy Medical Center (now known as St. John's Mercy Health System) is attached as Exhibit B. This webpage clearly lists Bernard A. Duco, Jr. as the registered agent. While Mr. Conover's address has changed since the Application was filed in 1999, had the Commission listed him or Mr. Duco on its correspondence relating to the annual report, it would have been properly directed to Mr. Conover and the report timely filed.

13. Despite the fact that St. John's Mercy Washington has had this STS Certification since 1999, neither Mr. Duco nor Mr. Conover has ever received notification that an Annual Report was due and one has never been filed.

14. St. John's Mercy Creve Coeur also has an STS Certification which was applied for on September 22, 1988 (TA-89-65).

15. In our attempts to ascertain the contact information was on EFIS for St. John's Mercy Washington and St. John's Mercy Creve Coeur, we had many conversations with Ms. Kim Happy in the Commission's Data Center. After much research in both EFIS and the Commission's prior data system, Ms. Happy informed us

that the information on EFIS for St. John's Mercy Hospital had become intermingled with the information for St. John's Mercy Creve Coeur. While the STS Certificate for the Washington, Missouri Hospital was in the Commission's records with the address for the Creve Coeur Medical Center, apparently the Creve Coeur certification information had not been transferred over when old records were transferred in to the new EFIS system. Due to our efforts, this incorrect information has been corrected in EFIS. A copy of Ms. Happy's memo relating to this matter is attached as Exhibit C.

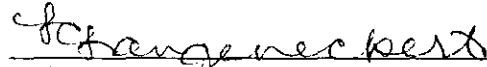
16. Upon first realizing that its 2002 annual report was past due, St. John's Mercy Washington immediately took steps to complete and file its 2002 annual report and filed its 2003 annual report early, as well as arranging for filing of the 2002 and 2003 annual reports for the Creve Coeur location of St. John's Mercy Creve Coeur which were not the subject of any Complaint before the Commission. St. John's Mercy Washington has complied with all Commission Orders in this case.

17. St. John's Mercy Washington and its parents, St. John's Mercy Health System, are not-for-profit corporations which, among other things, are engaged in charitable and indigent care activities. Assessment of penalties against St. John's Washington would serve no useful purpose and would impinge on these activities.

WHEREFORE, for the reasons above stated, St. John's Mercy Washington moves the Commission to dismiss the Staff's complaint.

Respectfully submitted,

THE STOLAR PARTNERSHIP LLP



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911 Washington Avenue

St. Louis, MO 63101-1290

Fax: 314-436-8400

Attorneys for St. John's Mercy Medical  
Center d/b/a St. John's Mercy Hospital

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed to all counsel of record this 28<sup>th</sup> day of April, 2004.



Lisa C. Langeneckert

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

In the matter of the Application of )  
St. John's Mercy Health System, D.B.A. St. John's Mercy Hospital )  
 (Name of Applicant) )  
 for a certificate of service authority to ) Case No. TA-99-417  
 provide Shared Tenant Services within )  
 the State of Missouri. )

**FILE**  
 MAR 30 1999  
 Missouri Public  
 Service Commission

**APPLICATION FOR CERTIFICATE OF SERVICE AUTHORITY  
TO PROVIDE SHARED TENANT SERVICES  
IN THE STATE OF MISSOURI**

**PLEASE PRINT OR TYPE**

1. Name of Applicant: St. John's Mercy Hospital Date of Application: \_\_\_\_\_
2. Address of Principal Place of Business: \_\_\_\_\_ Contact Person Who Can Respond to  
 Questions from the Commission: \_\_\_\_\_
- Street 200 Madison Avenue Name Dave Conover  
 Address 615 S. New Ballas Road  
 City Washington St. Louis, MO 63141  
 State MO Zip 63090 Telephone (314) 562-6939
3. Applicant is:
- ☐ Individual doing business under own name.
- ☐ Individual doing business under fictitious name.  
 (Attach a copy of registration of fictitious name with Secretary of State )
- ☐ Partnership. (Attach copy of partnership agreement.)  
 (Application must be filed by a licensed attorney-at-law in good standing in Missouri.)
- ☒ Missouri Corporation. (Attach certified copy of Articles of Incorporation and certificate of  
 incorporation from the Secretary of State. Application must be filed by a licensed attorney-at-law  
 in good standing in Missouri.)
- ☐ Corporation - Not Missouri. (Attach certificate of authorization to transact business in Missouri  
 from Secretary of State. Application must be filed by a licensed attorney-at-law in good standing  
 in Missouri.)
4. Applicant proposes to provide Shared Tenant Services (STS) in the State of Missouri under the jurisdiction  
 of the Missouri Public Service Commission (Commission) pursuant to Sections 392.410 and 392.520, RSMo  
 Supp. 1997. Applicant requests Certificate of Service Authority to install, own, operate, control, manage  
 and maintain Shared Tenant Services as described on the attached continuation sheets.
- Number of locations to be served: 2 (Attach one continuation sheet for each location to be served.)

20. Name and address of Building Owner:

St. John's Mercy Hospital

200 Madison Avenue

Washington, MO 63090

21. If Applicant is not the Building Owner, has applicant received formal authorization from the Building Owner(s) to provide STS? ☐ Yes ☐ No

22. Does a Local Exchange Company own the building's Riser Cable? ☐ Yes ☒ No

If the answer is "no", answer the following:

A. Name and Address of owner of the Riser Cable:

St. John's Mercy Hospital

200 Madison Avenue

Washington, MO 63090

B. Does the inside wiring conform with the Local Exchange Company's standards?

☒ Yes ☐ No

C. Would the Local Exchange Company have access to cabling to serve tenants requesting direct services from them? ☒ Yes ☐ No

D. Would the owner of the cable charge the Local Exchange Company for the use of this cabling?

☐ Yes ☒ No

E. If so, what would be the maximum rate? \_\_\_\_\_



17. If Applicant foresees any problem in retaining and/or providing the following information to the Commission, please put an X in front of the letter and explain the problem or provide comments in the space following the item. Attach additional sheets if necessary.

See Exhibit "A" A. A complete description of all proposed telecommunications services to be offered at each location.

B. A complete description of any non-telecommunications services offered at each location.

C. A copy of the contract(s) the Applicant intends to use with its tenants.

NA D. A copy of the contract(s) the Applicant intends to sign with the Local Exchange Company.

See Exhibit "A" E. A description of the type of STS technology to be used at each location. (i.e., type of PBX, partitioned, etc.)

F. An annual listing of any STS related complaints from tenants which would also specify the nature of the complaint.

See Exhibit "A" G. Description of the form of interconnection used to provide toll service to tenants. (e.g., direct trunks to the interexchange carrier.)

See Exhibit "B" H. A copy of the notice used by the Applicant to notify tenants that local exchange access line service may not be immediately available if STS is terminated at the location.

See Exhibit "B" I. Rates charged by the Applicant at each location.

J. The total number of tenants and corresponding stations served at each location.

18. All buildings at the location for which shared tenant services authority is sought herein are located on either a continuous tract of land or upon adjacent and abutting tracts of land only separated by a public thoroughfare as shown on the diagram or drawing attached hereto and marked as Appendix 1. All buildings and land at the location for which shared tenant services authority is sought herein are subject to common ownership interest or associated ownership interests. All buildings and land at the location for which shared tenant services authority is sought herein are located in the same wire center.

Location to be served:

(Street Address)

851 East 5th Street, (Medical Office Building)  
Washington, MO 63090

200 Madison Avenue (Hospital)  
Washington, MO 63090

19. Description of premises:  
(Offices, hospital, etc.)

Medical Office Building  
Acute Care Hospital

5. Applicant agrees that this Certificate of Service Authority will authorize provision only of Shared Tenant Services in the State of Missouri and does not authorize the provision of any other telecommunications services.
6. Applicant agrees to notify tenants in advance of subscribing to STS that local exchange access may not be immediately available if STS is terminated at the location.
7. Applicant agrees to notify the Commission if STS is discontinued at a location, and state the date notice was given to the Local Exchange Company.
8. Applicant requests that this Certificate of Service Authority be made applicable to additional locations which may be served by the Applicant in the future. However, the Applicant must update paragraph four (4) of this Application and file additional continuation sheets at least sixty (60) days prior to the anticipated establishment of STS at each additional location. The Applicant recognizes that this paragraph eight (8) in no way constitutes a waiver of the single building or less requirement.
9. Applicant agrees to provide annual reports to the Commission listing all premises served and other information required by the Commission.
10. Applicant agrees to comply with all Commission rules and regulations which are applicable to providers of Shared Tenant Services.
11. Applicant understands that an authorization to provide Shared Tenant Services is not transferable.
12. Applicant understands that providing Shared Tenant Services without a Certificate of Service Authority, or in violation of the terms and conditions prescribed for the provision of such service, may subject the Applicant to penalties as provided for by law.
13. Applicant further agrees to notify the Missouri Public Service Commission if, for any reason, Applicant ceases to provide Shared Tenant Services in the State of Missouri.
14. Unless and until otherwise ordered by the Commission, Applicant agrees to pay its annual apportioned share of general regulatory expenditures that are charged to telephone companies pursuant to Section 393.370, RSMo 1996.
15. Applicant agrees to cooperate with Staff in providing additional information which may be needed to process this application. In addition, Applicant agrees to maintain the information listed on Page 3 hereto, and understands that it may be required to supply that information to the Commission or its Staff at a later date.
16. The original Application and fourteen copies should be mailed to:

Missouri Public Service Commission  
 Truman State Office Building  
 301 W. High St.  
 P.O. Box 360  
 Jefferson City MO 65102

One copy should be mailed to:

Office of the Public Counsel  
 P.O. Box 7800  
 Jefferson City MO 65102

One copy should be mailed to the Legal Department of the Local Exchange Company(ies) which would serve the Shared Tenant Services location.

23. Consistent with the Commission's treatment of other certificated Shared Tenant Services providers, Applicant requests that the following statutes and regulations be waived:

|            |   |
|------------|---|
| 392.220    | File tariffs with the Commission.   |
| 392.230    | Charges for short and long distance service.                                |
| 392.370(4) | Submission of cost information.   |
| 392.370(5) | Application of 392.220 and 392.230 for transitionally competitive services. |
| 392.390(3) | Separations reports.  |
| 392.500    | Changes in rates.   |
| 392.240(1) | Rates-reasonable average return on investment.                              |
| 392.270    | Property valuation.   |
| 392.280    | Depreciation rates.   |
| 392.290    | Issuance of stocks and bonds.   |
| 392.310    | Issuance of stocks and bonds.   |
| 392.320    | Issuance of stocks and bonds.   |
| 392.330    | Issuance of stocks and bonds.   |
| 392.340    | Reorganization.   |

|                        |   |
|------------------------|---|
| 4 CSR 240-10.020       | Income on depreciation fund investments.    |
| 4 CSR 240-30.010(2)(C) | Posting exchange rates in central office.   |
| 4 CSR 240-30.040       | Uniform system of accounts.                 |
| 4 CSR 240-32.030(1)(B) | Exchange boundary maps.                     |
| 4 CSR 240-32.030(1)(C) | Record of access line.                      |
| 4 CSR 240-32.030(2)    | Telephone directories.                      |
| 4 CSR 240-32.070(4)    | Coin telephones.                            |
| 4 CSR 240-33.030       | Inform customers of lowest priced services. |
| 4 CSR 240-33.040(5)    | Finance fee.                                |

Wherefore, Applicant requests the Missouri Public Service Commission to grant its Certificate of Service Authority to Applicant to install, own, operate, control, manage and maintain shared tenant services in the State of Missouri as described above.

Sign here:

Timothy L. Elliott

Print or type name and address:

Timothy L. Elliott, Esq.  
The Lowenbaum Partnership  
222 South Central Avenue, Suite 901  
St. Louis, Missouri 63105  
Missouri Bar #: 42949

State of Missouri )

County of St. Louis )

Comes now before me Timothy L. Elliott, and states that (s)he is  
Counsel to St. John's Mercy Hospital  
Applicant herein, and further states that the information contained in this Application is  
accurate to the best of his/her information and belief.

Sign here:

Timothy L. Elliott

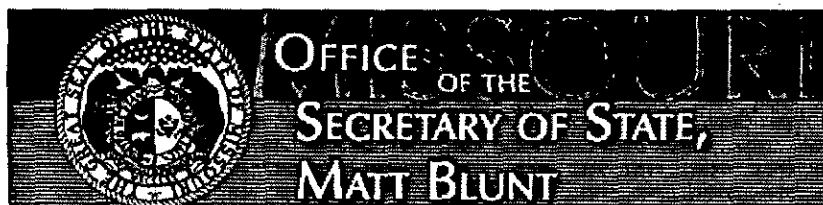
Subscribed and sworn to before me this 19<sup>th</sup> day of March, 1999.

Renee E. Ragdale  
(Notary Public)

My Commission Expires: September 23, 2001

99tqmb(elliott-form)

**RENEE E. RAGDALE**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
City of St. Louis  
My Commission Expires: Sept. 23, 2001



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#### Filed Documents

Date: 4/26/2004 (Click above to view filed documents that are available.)

#### Business Name History

| Name                            | Name Type  |
|---------------------------------|------------|
| ST. JOHN'S MERCY HEALTH SYSTEM  | Legal      |
| ST. JOHN'S MERCY MEDICAL CENTER | Prev Legal |

#### Non-Profit Corporation - Domestic - Information

|                                |               |
|--------------------------------|---------------|
| Charter Number:                | N00017776     |
| Status:                        | Good Standing |
| Entity Creation Date:          | 11/11/1891    |
| State of Business.:            | MO            |
| Expiration Date:               | Perpetual     |
| Last Annual Report Filed Date: | 10/22/2003    |
| Last Annual Report Filed:      | 2003          |

#### Registered Agent

|                 |   |
|-----------------|---|
| Agent Name:     | BERNARD A. DUCO, JR.                    |
| Office Address: | 2039 N GEYER RD<br>SAINT LOUIS MO 63131 |

#### Mailing Address:

Office of the Secretary of State, Missouri - Matt Blunt  
State Capitol, Room 208 and State Information Center, 600 W. Main  
Jefferson City, MO 65101 • (573) 751-4936 • SOSMain@sosmail.state.mo.us  
[Internet Privacy Policy Statement]

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

## Data Center

# Memo

**To:** File  
**From:** Kim Happy  
**Date:** 4/27/2004  
**cc:** Lisa Langeneckert  
Via E-mail - [llangeneckert@stolarlaw.com](mailto:llangeneckert@stolarlaw.com)  
**Re:** St. John's Mercy Hospital and St. John's Mercy Medical Center

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I spoke to Lisa Langeneckert on 3/24/04 regarding the certification of St. John's Mercy Hospital and St. John's Mercy Medical Center. There was confusion regarding the companies' certification information.

I searched EFIS and the Old Docket System. I found that St. John's Mercy Medical Center was granted a certificate in TA-89-65, however, this information was not captured in EFIS. Therefore, the company was not included on Annual Report and Assessment mailings. The following registrations were present in EFIS at the time.

- St. John's Mercy Hospital (#1122)  
615 South New Ballas Road  
Creve Coeur, MO 64141  
  
Case: TA-99-417  
Date: 5/12/1999
- St. John's Regional Medical Center (#1123)  
2727 McClelland Boulevard  
Joplin, MO 64804  
  
Case: TA-98-121  
Date: 9/1/1998

The registration for St. John's Mercy Hospital actually displayed the address for St. John's Mercy Medical Center. So it appears that the two companies' registrations were somehow intermingled. Thus, I updated EFIS to reflect the following.

**Address & Contact Update**

- St. John's Mercy Hospital (#1122)  
901 East Fifth Street  
Washington, MO 63090  
  
Case: TA-99-417  
Date: 5/12/1999