

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of  
Answer Omaha, Inc., Omaha, Nebraska,  
for authority to provide Radio Paging  
Service.

) Application No. C-336

) GRANTED

) Entered: April 12, 1983

APPEARANCES: For the applicant  
Warren S. Zweiback, Esq.  
10250 Regency Plaza, Suite 300  
Omaha, Nebraska

For the protestant  
Donald H. Erickson, Esq.  
10330 Regency Parkway Drive  
Omaha, Nebraska 68114

BY THE COMMISSION:

OPINION AND FINDINGS

By application filed December 27, 1982, Answer Omaha, Inc., Omaha, Nebraska seeks authority to provide radio paging service. Notice of the application was published in the Daily Record, Omaha, Nebraska on December 31, 1982 pursuant to the Commission Rules. A protest to the granting of the application was filed January 25, 1983 by ATS Mobile Telephone Inc. of Omaha. Hearing on the application was held March 21, 1983 in Omaha, Nebraska with appearances as shown.

This application is the second application heard by this Commission which has been filed as a result of the tariff approved by this Commission in Docket C-314 which was an application of Northwestern Bell Telephone Company to revise its tariff. The revision on the 7th Revised Sheet 14 in Section 1 of the Mobile Telephone Exchange Service Tariff Regulation 2, Sub-Section (f) says:

"...A customer may offer Personal Signaling Service to its patrons; however, the customer is solely responsible for all charges in connection with this service. The Telephone Company's liabilities and responsibilities are limited to the Telephone Company's immediate customer and are not extended to the customer's patrons. A customer who intends to resell this service must obtain a certificate of convenience and necessity from the Nebraska Public Service Commission and obtain approval of tariffs."

Protestant challenges the application on the following grounds:

(1) Applicant's business is a telephone answering service not subject to jurisdiction of the Commission.

(2) Resale of paging service interconnected with a local land line telephone system is subject to Commission jurisdiction.

(3) The Commission order of December 21, 1982 is void as having been entered in a contested case in which ATS was an intervenor, without an evidentiary hearing or ultimate findings as required by Section 75-604 and Sections 84-913 thru 84-915, R.R.S. 1943 as amended.

(4) There is no basis for an application for issuance of a certificate of public convenience and necessity as a reseller because the Commission order of December 21, 1982 was an attempt to repeal standing tariffs and rules without proper notice and hearing as required by the rules and regulations of the Commission and the statutes.

(5) The tariff which was sponsored by Bell for its own convenience and not the public convenience, and as such, is discriminatory and contrary to the intent of the rules and regulations of the Commission and the laws of the state, and is void and cannot be the basis for an application or granting of a certificate of convenience and necessity for resale.

(6) The Commission order of December 21, 1982 in Application C-314 and the Bell revised tariff filed pursuant thereto are void as having been entered and approved by the Commission without there being in effect any rule, regulation or statute authorizing resale as required by Section 75-110 R.R.S. Neb. 1943 as amended.

The challenges to the jurisdiction of this Commission asserted by the protestant are contradictory and cumulative. The protestant on one hand asserts that the Commission is without jurisdiction because the business of the applicant is an answering service, therefore not subject to the jurisdiction of the Commission, and on the other hand, protestant asserts that the tariff requiring certification of resellers is void. Yet it was this same party as an intervenor in the tariff case that prompted the Commission to insert language into the tariff requiring certification of resellers. In view of the fact it was ATS that fought for the language in the tariff that applicant is relying upon in filing its application, the Commission will take jurisdiction of this matter as the first step in resolving the issues raised by the adoption of the resale provisions of the Bell tariff which was effective December 22, 1982.

Robert Weiland testified: He is the president and sole owner of the applicant. By this application he seeks authority to resell the radio paging service of Northwestern Bell. Applicant presently provides a twenty-four hour telephone answering service in Omaha and the toll-free calling area of Omaha including Council Bluffs, Iowa. In providing the service proposed, he would sell or lease pagers to his customers, he would subscribe to the paging service of Northwestern Bell on a bulk rate basis and in turn resell such service to his subscribers. Applicant would offer to service, replace or repair his pagers on a twenty-four hour basis which would avoid the need, for some pager subscribers at present, to rent spare pagers for replacement of malfunctioning units. Resale of Bell's paging service by the applicant would also permit a consolidation of billing in that he could bill for both rental of the pager and the service, thus the customer would only make one payment. At the present time, applicant has purchased pagers from Motorola and is leasing them to clients who then subscribe to Northwestern Bell's paging service.

Applicant produced two witnesses in support of its application. Each supporting witness testified to a strong preference for applicant's services and one cited failures in the service of the protestant.

Protestant produced two witnesses.

Neil Johnson testified: He is general manager of ATS Mobile Telephone Inc. He has held the position for five years. ATS offers tone and voice paging services and has also recently become equipped to offer display paging. It has been certificated for 15 years to offer one and two-way mobile telephone service. It offers 25 different types of pagers. It has repair facilities. ATS offers a tone only service that is generally the same type of service offered by Bell. ATS uses both low band and high band frequencies. Bell uses high band. ATS has approximately 4,800 accounts. Exhibit 8 is the ATS Mobile Telephone Tariff. Exhibit 9 is a copy of the application to amend the tariff. Under the proposed tariff ATS would have the same capability that Bell has, i.e. any entity or equipment supplier that desires to have paging equipment in stock available for immediate placement on a paging service can obtain assignment of

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codes and order the equipment precoded so that it would be available from stock on its shelf to be immediately activated at the time arrangements are made with the customer to lease or buy the equipment. Technology has developed the means to offer large blocks of tone codes so that the capacity is unlimited to satisfy the demands of anybody in the Omaha metropolitan area that wants to sell paging. An answering service is operated somewhat in conjunction with the paging service offered by ATS.

Frank Rizzuto testified: He is the secretary-treasurer of ATS. He testified that granting authority to resellers would be detrimental to protestant's business because of Northwestern Bell's lower rate for bulk users.

The evidence shows that applicant has pagers available for lease to customers. Applicant has obtained the numbers and codes from Bell and has made all the necessary arrangements to provide the service proposed. Applicant has a good business record and adequate technical experience to provide the service. The supporting witnesses furnished adequate evidence for the commission to conclude that the service applicant proposes to provide will fill a real demand in the communications industry and that public convenience and necessity requires the granting of the application.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that the applicant should be granted, and the applicant should be directed to file an application for approval of its rates and charges.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that application No. C-336 be, and it is hereby, granted and Answer Omaha, Inc. be, and it is hereby, authorized to provide radio paging service as a resale common carrier.

IT IS FURTHER ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Convenience and Necessity to operate as a resale common carrier of radio paging service.

IT IS FURTHER ORDERED that applicant file an application with the commission for approval of its rates and charges.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of April, 1983.

NEBRASKA PUBLIC SERVICE COMMISSION

*Harold D. Simpson*  
Chairman

ATTEST:

*John E. King*  
Executive Secretary

COMMISSIONERS CONCURRING: