

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Accurate Answering Service of Omaha, Nebraska, who seeks authority to provide radio paging services as a resale common carrier.	}	Application No. C-341
	}	GRANTED
	}	Entered: April 12, 1983

APPEARANCES: For the applicant
Lavern R. Holdeman, Esq.
1610 South 70th, Suite 200
Lincoln, Nebraska 68506

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

BY THE COMMISSION:

OPINION AND FINDINGS

By application filed December 29, 1982, Accurate Answering Service, Omaha, Nebraska seeks authority to provide radio paging service. Notice of the application was published in the Daily Record, Omaha, Nebraska on January 6, 1983 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 2, 1983 in Omaha, Nebraska with appearances as shown.

This application is the first 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."

Applicant's position is that she questions the Commission's jurisdiction to require a certificate of convenience and necessity in order for her to do business in the manner she proposes; however, she has chosen to file an application and submit to the Commission's jurisdiction rather than challenge the Commission's jurisdiction. 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 her 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.

Rubie K. Czerwinski testified: She is the owner and operator of the applicant. She has been in business as Accurate Answering Service for 13 years. By this application she seeks authority to rent, service and resell the telephone signalling service. Applicant offers digital and tone paging service to its customers in the Omaha metropolitan area. Applicant operates from four locations in the Omaha area. A paging service customer would be able to direct service requests, complaints, or bring malfunctioning paging equipment to any of the four locations and receive immediate service. By use of digital pagers, tone pagers, and tone pagers with voice storage capabilities, her customers are able to immediately respond to telephone calls taken by her operators or by her computerized telephone answering service. Without the authority she would be required to refer all request for paging service to the protestant. Bell offered some paging service but it was not competitive with that offered by the protestant. Applicant's relationship with the protestant has been far from satisfactory. Applicant has received numerous complaints concerning the equipment and service offered by ATS. ATS also operates an answering service. When her customers seek paging service from ATS it attempts to persuade her customers to use its answering service. In late 1982 applicant was informed by Bell that it was attempting to obtain authority from the Commission to sell its paging numbers in bulk quantities to its customers for resale to their customers. After the original order permitting resale of the Bell service by her company, she contracted with Motorola Company for purchase of 250 pagers for \$164.16 each. After the original order was vacated and the Commission required the tariff be amended she did not begin offering Bell service for resale. She leased her pagers to customers and arranged for her customers to receive paging service from Bell. Under this arrangement Bell provides the service and bills the customer on the the customer's telephone bill and is responsible for collecting the payments from her customer. The equipment she has purchased from Motorola is "state of the art" for paging systems. If the application is granted, applicant would provide radio paging service and telephone answering service from the same location and bill her customer for the entire cost of the paging service on its own bill. She values her answering service at \$553,000. Appendix A to Exhibit 3 shows the financial statement of her and her husband which shows a net worth of \$1,234,784 as of December 31, 1982. She has approximately 900 answering service customers. She would advertise a paging service to people who were not now clients. She would buy more pagers if demand required. She would offer tone-only paging. She would contract for blocks

from Bell and assign the numbers to her customers. She would pay for all the numbers and assume responsibility for the service. Her customers could not communicate with each other without going through the facilities of Bell.

Applicant produced nine witnesses in support of her application. Each supporting witness testified to a strong preference for applicant's services and many 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 15 is the ATS Mobile Telephone Tariff. Exhibit 16 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 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. He sees no problem with Mrs. Czerwinski's present arrangement of renting pagers and having Bell provide the service.

William R. Clark testified: He is president of ATS. He is also associated with Electronic Engineering Company of Des Moines, Iowa. He is president and owner of that company. That company has an 8% interest in ATS. Electronic Engineering performs the same service as ATS. ATS has on order a \$225,000 high capacity terminal that will perform the ultimate paging service available. He estimates ATS has more than \$3,000,000.00 invested in equipment.

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, a strong financial statement 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 Application C-341 of Accurate Answering Service of Omaha 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-341 be, and it is hereby, granted and Accurate Answering Service be, and it is hereby, authorized to provide radio paging service as a resale common carrier.

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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:

COMMISSIONERS CONCURRING:

Terence L. Kubick
Executive Secretary