

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

ATS Mobile Telephone Inc., Omaha,)	Formal Complaint No. 1083
Nebraska,)	
)	
Complainant,)	
v.)	
Curtin Call Communications, Inc.,)	SUSTAINED
Ben and Mary Ciaccio, dba Telephone)	
Secretaries of Omaha and Telephone)	
Answering Service of Omaha, Omaha,)	
Nebraska,)	
Defendant.)	Entered: September 3, 1974

APPEARANCES: For the complainant
Donald H. Erickson, Attorney
1660 Woodmen Tower
Omaha, Nebraska

For the defendants
Einar Viren, Attorney
904 City National Bank Building
Omaha, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By formal complaint filed April 19, 1974, ATS Mobile Telephone, Inc., Omaha, Nebraska, charged Curtin Call Communications, Inc., Ben and Mary Ciaccio, dba Telephone Secretaries of Omaha and Telephone Answering Service of Omaha with offering radio common carrier service within the State of Nebraska without a Certificate of Convenience and Necessity from this Commission.

A copy of the complaint was served on the defendants by certified mail on April 23, 1974. Defendant's answer was filed on June 12, 1974.

Pursuant to notice required by law, public hearing was held on the formal complaint on July 17, 1974, at 9:30 a.m. in the Commission Hearing Room, Lincoln, Nebraska, with appearances as set forth above.

Upon consideration of the formal complaint, the evidence adduced at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Complainant is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business in Omaha, Nebraska. It offers one and two-way mobile communications services as a common carrier under the jurisdiction of this Commission.
2. Defendant, Curtin Call Communications, Inc. is an Iowa corporation and defendants Ben and Mary Ciaccio are individuals doing business as Telephone Secretaries of Omaha and Telephone Answering Service of Omaha.
3. The evidence indicates that Curtin Call Communications, Inc., is a radio common carrier licensed by the Federal Communications Commission with its base station located at 401 West Broadway, Council Bluffs, Iowa. Ben Ciaccio is the president of Curtin Call Communications, Inc., and maintains an office at 300 Executive Building, Omaha, Nebraska.
4. The complaint alleges that Curtin Call Communications, Inc. is offering communications service as a common carrier within the territory of the complainant (Omaha, Nebraska) without having a certificate of convenience and necessity from this Commission as required by law.
5. One of complainant's witnesses was its General Manager, who testified that two of its subscribers had discontinued service and had taken service through Telephone Secretaries of Omaha. He testified that he called Telephone Secretaries of Omaha and spoke with someone who identified himself as Mr. Ciaccio. He was told that service was available in Omaha.

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6. Mr. Denny Jones, manager of Alarm Specialists, Omaha, Nebraska testified that he was a subscriber of A.T.S. Mobile Telephone and that he had also accepted service from a company known as Radio Contact Communications of Council Bluffs, Iowa for a period of three days. One of the reasons he tried that service was that the rate was cheaper than that of A.T.S. Mobile Telephone Inc.

7. Mr. Ben Ciaccio was called as a witness by the complainant, however, he refused to answer questions on advise of counsel on the grounds that the Commission had no jurisdiction in this matter. Mr. Ciaccio's deposition taken by the complainant, at which time he also refused to answer certain questions, was offered in evidence by the complainant. Mr. Ciaccio did testify in his own behalf and admitted that he had offered service in Omaha, Nebraska:

- Q. "Well, let me withdraw that question. You have sold paging services."
A. "Yes sir."
Q. "In Omaha, Nebraska?"
A. "Yes Sir."

On cross examination, Mr. Ciaccio testified that Radio Contact Communications and U.S. Paging Company were trade names under which Mr. William Curtin and he operated as agents for Curtin Call Communications in the sale of services.

8. The evidence, including Mr. Ciaccio's own testimony, clearly indicates that defendants are in fact offering communications services to business or residents of Omaha, Nebraska.

9. Defendants claim that this Commission has no jurisdiction over them for the reason that Curtin Call Communications, Inc. is an Iowa Corporation conduct-
int business in the State of Iowa under authority granted to them by the Federal Communications Commission.

10. The question of this Commission's jurisdiction over radio common carriers was settled by the Nebraska Supreme Court in Radio-Fone, Inc. vs. A.T.S. Mobile Telephone, Inc., 187 Neb 637, 193 N.W. 2d 442, in which it was held that this Commission does have jurisdiction over radio common carriers.

11. The evidence indicates that the service offered by the defendant is of the same nature as that provided by the complainant. Section 75-604, R.S. Neb. as amended confers jurisdiction of this Commission to issue certificates of convenience and necessity to offer telephone service in the State of Nebraska. Title 47 U.S.C., Section 221(b) exempts such service from the jurisdiction of the Federal Communications Commission except as to the licensing of radio channels. This Commission has and will continue to exercise jurisdiction over service provided in Nebraska from an exchange located in another state (see application numbers 30357, 29690, etc.)

12. It should also be noted that the Federal Communications Commission in its order granting a license to the defendant recognized that the question of its providing communications service to Nebraska customers should be considered by this Commission.

13. The formal complaint should be sustained and defendant and its officers, employees and agents should be ordered and directed to cease and desist from offering communications service to subscribers located in the State of Nebraska without first receiving a certificate of convenience and necessity as required by law.

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ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint 1083 be and it is hereby sustained and Curtin Call Communications, Inc., its officers, employees and agents be and it is hereby ordered and directed to cease and desist from offering communications service to subscribers located in the State of Nebraska without first receiving a certificate of convenience and necessity from this Commission as required by law.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of September, 1974.

NEBRASKA PUBLIC SERVICE COMMISSION

Eric Rasmussen
Acting Chairman

ATTEST:

Ernest A. Hen
Secretary

COMMISSIONERS CONCURRING:

John G. Reynolds

COMMISSIONER DISSENTING:

Quane D. Gay