

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

ATS Mobile Telephone, Inc., Omaha, Nebraska,)	Formal Complaint No. 1107
)	
Complainant,)	
)	
vs.)	
)	
General Communications Company, Inc., Omaha, Nebraska,)	ORDER ON CERTIFIED QUESTIONS
)	
Defendant,)	
)	
and)	
)	
Northwestern Bell Telephone Company, Omaha, Nebraska,)	
)	
Collateral Party.)	Entered: August 29, 1977

BY THE COMMISSION:

OPINION AND FINDINGS

Following the deposition of Frank O. Rizzuto, Treasurer of ATS Mobile Telephone, Inc., the Defendant, General Communications Company, Inc., filed a motion on August 15, 1977, to compel Frank O. Rizzuto to answer questions which he refused to answer during said deposition. There were a total of 34 questions certified to this Commission.

Pursuant to notice, oral argument on the Motion to Compel Frank Rizzuto to Answer Certain Questions was heard on August 23, 1977.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the following certified questions shall be answered and the objections overruled:

- Page 17, Line 8
- Page 20, Line 15
- Page 122, Line 25
- Page 126, Line 11
- Page 143, Line 17
- Page 143, Line 25

All other objections to the questions asked during the deposition of Frank O. Rizzuto will be sustained and need not be answered.

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of August, 1977.

NEBRASKA PUBLIC SERVICE COMMISSION

Duane D. Gay
Chairman

ATTEST:

Ernest H. Kern
Secretary

COMMISSIONERS CONCURRING:

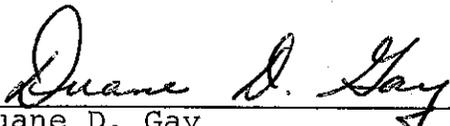
COMMISSIONERS DISSENTING:

DISSENTING OPINION OF COMMISSIONER DUANE GAY

I must respectfully dissent from the majority opinion in this matter, as I believe all questions should be answered in order to allow this Commission full knowledge of all matters. Testimony sought by means of a deposition must be competent, relevant, and material to the issues or to issues likely to arise under the pleadings. "That is, the right to take depositions extends, ordinarily, to all matters and subjects which may reasonably be expected to be relevant and material to the issues involved in the case." 23 Am. Jur. 2d Depositions and Discovery §14(1965).

Discretion as to what is material and relevant should be liberally construed to enable parties to properly prepare for hearings. Particularly is this true, I feel, when the deposed party is a common carrier with certificated authority and is in the position of being a regulated monopoly serving the public. A showing of relevancy for discovery purposes is not as strict as that which governs admissibility of evidence at trial. Discovery should be allowed if the information sought is nonprivileged and meets the test of appearing reasonably calculated to lead to the discovery of admissible evidence.

The questions of concern here are not irrelevant. The questions appear reasonably calculated to lead to the discovery of evidence important to the issues that will be considered at the hearing. Therefore, the Commission is in error in not requesting the questions to be fully answered.



Duane D. Gay
Commissioner, Third District