

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1269
National Accounts, Inc. d/b/a Lang)
EDP Corporation of Parsippany,)
New Jersey seeking authority to) GRANTED
operate as a resale carrier of)
intrastate intraLATA and interLATA)
telecommunications services within)
the state of Nebraska.) Entered: April 8, 1996

APPEARANCES:

For the Applicant:

Richard Dubnoff
National Accounts, Inc.
119 Cherry Hill Road
Parsippany, New Jersey 07054

For the Communications Department:

Deonne L. Bruning
300 The Atrium, 1200 N St.
P.O. Box 94927
Lincoln, NE 68508

PRELIMINARY MATTERS

National Accounts, Inc. d/b/a Lang EDP Corporation, of Parsippany, New Jersey, filed an application with the Commission on November 30, 1995. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, on December 1, 1995. National Accounts appeared before the Commission for a video-conference hearing, chaired by Commissioner Rod Johnson, February 13, 1996 in the Commission Library, Lincoln, Nebraska.

BY THE COMMISSION

O P I N I O N A N D F I N D I N G S

Upon consideration of the application, the governing statutes and rules¹, the evidence adduced at the February 13, 1996 hearing, and being fully informed, the Commission is of the opinion and finds:

¹Interexchange reseller applications are governed by Neb. Rev. Stats. 75-604 and 86-805 (Cum. Supp. 1994 and 1994 Reissue, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

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Nebraska was divided into three Local Access Transport Areas ("LATAs") as a result of the terms of the Modification of Final Judgement (the "MFJ") issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co., F.Supp. 131 (D.D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph Co., 569 F.Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

While Neb. Rev. Stat. 75-604, by its language, refers to local exchange service, the Nebraska Supreme Court in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb. 268, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of the statute. This was recognized by the Legislature in LB 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 (part of LB 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

Mr. Richard Dubnoff, CEO and Chairman of National Accounts, Inc, testified. He stated the applicant has received authority to operate in approximately forty-five (45) states. Further, he testified that National Accounts, Inc. is a privately held corporation that incorporated in New Jersey on July 14, 1993. Mr. Neil Lang and Mr. Richard Dubnoff are the sole shareholders.

Slamming complaints were filed with the Public Service Commission in the state of Florida against National Accounts in 1994. Mr. Dubnoff stated that the slamming complaints were primarily the result of using outside sales agents. Since 1994, National Accounts has instituted a policy to utilize salaried employees and a digitized voice confirmation system to prevent slamming. The Florida complaints have been resolved and the company is presently certificated to do business in Florida. Mr. Dubnoff stated that no other complaints have been filed against the company.

The underlying carrier for the services will be AT&T. National Accounts provides a toll-free 800 number for customer service on all customer bills. National Accounts' billing is performed by USBI and AT&T, depending on the number of calls the customer makes.

At this time, National Accounts markets 1+ and travel cards. National markets its products entirely through telemarketing and by its own direct salaried employees. National Accounts does not propose to provide alternate operator service in Nebraska. Also, new subscribers are not required to make advance deposits to obtain service.

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Financial information was provided to the Commission in the application. National Accounts began doing business in July, 1993, and Mr. Dubnoff stated the company is profitable. The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and Regulations.

This Commission denied National Accounts a certificate of authority on June 14, 1994, due to the company's failure to submit several late-filed exhibits that were requested by the Commission at the April 15, 1994 hearing in C-1047. Mr. Dubnoff stated that no other state commission has denied the applicant a certificate of authority.

Though the applicant was denied authority to operate in Nebraska, in August, 1994, it came to this Commission's attention that the company was marketing its services to consumers. Letters were sent to the company informing it to cease and desist its operations or face administrative penalties. In 1995, again this Commission received information that National Accounts was doing business in Nebraska without a certificate of authority. This Commission again notified the applicant that it was denied a certificate and it was not to operate within the state. Subsequently, the present application was filed for authority to operate in Nebraska.

Given the previous history of National Accounts in Nebraska, this Commission does not look kindly upon the present application. For nearly two (2) years, National Accounts disobeyed state statutes and Commission rules and regulations by operating within the state without a Certificate of Public Convenience and Necessity. National Accounts' response was that no one at the company was aware the application was denied.

Pursuant to Neb. Rev. Stat. §75-156, the Nebraska Public Service Commission may assess a civil penalty of up to \$100.00 per day against any cooperation for violating sections §75-604 or §86-805, i.e. for operating within Nebraska without a Certificate of Public Convenience and Necessity. In lieu of going through an administrative hearing, National Accounts signed a stipulation agreeing to pay an administrative fine of \$1,000.00 to the Public Service Commission for operating in violation of §75-604 and §86-806 for over one (1) year. A copy of the stipulation is attached as Exhibit A.

Blatant disregard for Nebraska laws will not be tolerated. The company has demonstrated fitness to operate within Nebraska and has acknowledged its past problems; however, if this company ignores state statutes, rules or regulations again, prompt measures to revoke this certificate will be instituted.

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Based on the testimony, the exhibits, and the proposed tariff, the applicant has provided the requisite information, has demonstrated its financial resources, and has proven to be technically competent to provide service. The application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1269 be, and it is hereby, granted and National Accounts, Inc. d/b/a Lang EDP Corporation, of Parsippany, New Jersey is hereby authorized to operate as a resale carrier of intrastate interexchange intraLATA and interLATA telecommunications services within the state of Nebraska.

IT IS FURTHER ORDERED that the applicant shall file, in accordance with the applicable statutes on or before April 30th of each year, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission (FCC), (b) a copy of any annual report to stockholders, (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission (SEC), (d) balance sheet and income statement for the previous year of operation and (e) for the State of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that applicant file an updated tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FINALLY ORDERED that this order be, and it is hereby made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 8th day of April, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Rod Johnson
//s//James Munnally
//s//Daniel G. Urwiller

Chairman

ATTEST:

Executive Director