

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against UniDial Incorporated for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 971483-TI
ORDER NO. PSC-98-0800-AS-TI
ISSUED: June 9, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

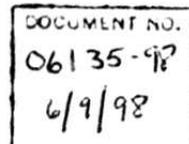
ORDER APPROVING SETTLEMENT

BY THE COMMISSION:

I. BACKGROUND

Unidial Incorporated (UniDial), Certificate Number 3500, is a provider of interexchange telecommunications service and was certificated on December 2, 1993. UniDial reported gross operating revenues of \$2,032,785.70 on its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, UniDial is subject to the rules and regulations of this Commission.

From January 1, 1996, until April 30, 1998, the Division of Consumer Affairs closed a total of 64 complaints against UniDial as unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code. Based on the number of complaints received by the Division of Consumer Affairs as apparent slamming violations, we opened this docket to investigate whether UniDial should be required to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes. However, prior to our issuance of a show cause order, UniDial submitted an offer to settle the



case. (A copy of the settlement offer is attached to this Order as Attachment A.)

II. DISCUSSION

On January 16, 1998, UniDial met with our staff to discuss the pending show cause case. The company explained that during the week of May 19, 1997, UniDial received a relatively large order of service change requests from a new agent. Due to the size of the order and the newness of the agent, UniDial decided to sample the validity of the letters of authorization (LOAs). Unfortunately, the entire order was processed before the sampling was completed. UniDial has since put in place procedures to prevent this timing problem in the future.

When it realized that the orders were not authorized, UniDial prevented any further orders from being processed, contacted our staff to notify them of the problem, and hired an independent company to contact each affected customer to explain the problem. UniDial also switched the affected customers back to their preferred carrier and rerated their calls as well as credited them the switching fees. Since that time, UniDial terminated Call Central, the new agent who sent in the unauthorized order.

On January 28, 1998, UniDial submitted its offer to settle (Attachment A). In its settlement offer, UniDial agreed to the following terms and conditions. First, for a period of one year, UniDial will independently verify 50% of all Florida orders initiated by an LOA. For a six-month period following that, UniDial will independently verify 25% of all Florida orders authorized by LOA. Second, for a period of one year, UniDial will mail an information package with prepaid postcards to 50% of all Florida sales generated by telemarketing (and verified by independent third party verification). For a period of six months following that, UniDial will mail an information package to 25% of all Florida orders generated by telemarketing (and verified by independent third party verification). Third, UniDial will formally adopt its previously unwritten "Satisfaction Guarantee" policy, under which UniDial will incur the primary interexchange carrier (PIC) change fee to return any customer to his or her carrier of choice if, for any reason, the customer is not satisfied with UniDial's service. Finally, UniDial will make a contribution

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in the amount of \$125,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing.

III. CONCLUSION

We support UniDial's proposal to verify 50% of all Florida orders generated by LOA for a one year period followed by 25% for a six month period. We believe that this will allow UniDial to better evaluate the information on the LOA to reduce the occurrence of forgery. We also support UniDial's proposal to mail an information package to 50% of all Florida sales generated by telemarketing in addition to third party verification for a period of one year followed by 25% for a six month period. This is an additional step to ensure the customer authorized the change of long distance providers. In addition, formally adopting its "Satisfaction Guarantee" policy will ensure that the consumer will incur no fee for the unauthorized switching of their long distance provider.

The company has satisfactorily addressed our concerns. Moreover, the company has been very cooperative in resolving all issues. Upon consideration, we hereby approve the terms of the settlement agreement as found in Attachment A to this Order.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement proposal filed by UniDial Incorporated and attached to this Order as Attachment A is hereby approved. It is further

ORDERED that this docket should remain open pending remittance of the \$125,000 voluntary contribution by UniDial Incorporated. It is further

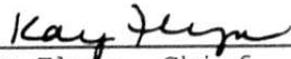
ORDERED that UniDial Incorporated shall remit the voluntary contribution within five business days of the issuance of this Order. It is further

ORDERED that upon UniDial Incorporated's remittance of the \$125,000 contribution, this docket may be closed. The \$125,000 contribution shall be forwarded to the Office of the Comptroller

for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

By ORDER of the Florida Public Service Commission this 9th day of June, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

WPC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

MARCY A. GREENE
ATTORNEY-AT-LAW

SWIDLER
&
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DIRECT DIAL
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January 28, 1998

Via Overnight Delivery

Mr. Rick Moses
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED

Re: *UniDial, Inc. - Docket No. 971483*

Dear Mr. Moses:

UniDial, Inc., by its undersigned attorneys, respectfully submits its settlement offer in the above-referenced matter.

UniDial is an interexchange carrier which provides interexchange service in 48 states. UniDial was certified by the Florida Public Service Commission to provide intrastate interexchange service in Docket No. 930865-TI, on December 2, 1993. UniDial currently provides service to approximately 120,000 presubscribed customers nationwide, and to approximately 7,000 customers in Florida.

As you know, 67.8% (38 of the 56 complaints closed as of January 22, 1998)¹ of the complaints received by the Commission arose from the activity of one agent, Call Central.² UniDial has historically operated through a network of independent agents. UniDial provides training and support to its agents; agents are required to comply with UniDial's policies and procedures regarding marketing, including policies regarding federal and state regulation of PIC change requirements. (These marketing guidelines are available for your review if you wish). UniDial has added a direct sales force and anticipates that, over time, its direct sales force will substantially supplement its independent agents.

Call Central and UniDial entered into a standard Agent's Agreement in March 1997. Among

¹ Although the report provided by the Commission's Staff indicates 58 closed slamming complaints, two of those complaints -- Alford (053470P) and Thompson (103654P) -- are not slamming offenses. Ms. Kelly Biegalski has confirmed this.

² Of the closed complaints received after May, 1997, 38 of the 39 (97.4%) are attributable to the activities of Call Central.

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other things, the Agreement subjected Call Central to termination for "[t]he failure of the Agent or any Subagent, employee, representative, contractor of Agent to comply with the policies and procedures of UniDial in effect, from time to time including, without limitation, those regarding letters of agency and the prevention of unauthorized switching of Telecommunications Services."

During the week of May 19, 1997, Call Central submitted electronically an order of approximately 5,000 ANIs to be switched to UniDial. Due to the size of the order and relative newness of the agent, UniDial's Senior Vice President of Operations, Ed Wampler, contacted Call Central and requested a sampling of the Letters of Authorization ("LOA") for the phone numbers submitted. Unfortunately, the electronic order was processed before UniDial personnel were able to verify the sample LOAs. UniDial now has procedures in place to ensure that this timing problem will not be repeated.

As the orders were processed, it quickly became apparent that proper authorization had not, in fact, been received for the orders. UniDial took all steps in its power to rectify the situation, including voluntarily contacting you, contacting LECs to stop further provisioning of the orders, and hiring an independent company (Arback Marketing) to contact each affected customer. Call Central was quickly terminated. During the following months, UniDial kept the Commission informed of its actions and implemented any recommendations that you offered. Arback Marketing contacted 3,089 of the affected customers and informed them of what had happened, and instructed them on how to switch back to their preferred carrier. Through Arback, UniDial also informed each customer that any switching fees assessed by the LEC would be paid by UniDial, that any calls made while on UniDial's service would be billed at UniDial's lowest rate (interstate \$0.099 per minute and intrastate \$0.119 per minute), and that UniDial would credit the difference between this rate and any lower rate that customers may have enjoyed with their previous carrier. UniDial issued credit for the amount of services provided to affected customers; these credits totaled approximately \$45,000.³ A significant number of affected customers were credited in full for their long distance usage and PIC change fees.

Further, UniDial has responded quickly to other, non-Call Central related consumer complaints, has made every effort to ensure that customers were personally contacted, and offered credits where appropriate.⁴ UniDial respectfully submits that it has learned from this experience,

³ UniDial has also worked with the U.S. Postal Inspector's Office investigation to locate and prosecute Call Central's President, Mr. Brett Kaye.

⁴ For example, UniDial refers the Commission to the September 16, 1997 letter of Glen Powell (complaint 183313I), thanking the Commission for its assistance in resolving his complaint, and noting that UniDial personnel had contacted him, provided a contact name and

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has improved its procedures for verifying orders, and continues to do so. Without the Call Central complaints, UniDial had only one closed slamming complaint since May, 1997.

UniDial proposes the following terms of settlement:

1. For a period of one year, UniDial will independently verify 50% of all Florida orders initiated by an LOA. For a period of six months following that, UniDial will independently verify 25% of all Florida orders authorized by LOA.
2. For a period of one year, UniDial will mail an information package with prepaid postcards to 50% of all Florida sales generated by telemarketing (and verified by independent third party verification).⁵ For a period of six months following that, UniDial will mail an information package to 25% of all Florida orders generated by telemarketing (and verified by independent third party verification).
3. UniDial will formally adopt its previously unwritten "Satisfaction Guarantee" policy, under which UniDial will incur the PIC change fee to return any customer to his or her carrier of choice if, for any reason, the customer is not satisfied with UniDial's service.
4. UniDial will make a contribution in the amount of \$125,000.00 to the general revenue fund of the State of Florida, with no admission of liability or wrongdoing.

Additionally, UniDial would be pleased to have a member of the Commission's Staff visit its headquarters in Louisville, Kentucky in order to review UniDial's operations and provide any suggestions for improvements. UniDial would be happy to pay for travel and accommodations if the Commission feels that such a on-site visit would be beneficial.

We believe that the foregoing settlement terms and conditions fully and appropriately address the salient concerns in this matter. The vast majority of the complaints received were due to the actions of one agent. UniDial accepts full responsibility for the conduct of its agent, has terminated the agent, and has revised its internal operating procedures to ensure that no such incident will occur in the future. UniDial recognizes that the activities of its agent created problems for Florida consumers and placed demands on the time and resources of the Commission and its Staff. UniDial

number, and made arrangements for appropriate credits.

⁵ UniDial currently requires that all telemarketing generated orders be verified by an independent third party, in accordance with F.A.C. 25-4.118(2)(c) and 47 C.F.R. §64.1100(c).

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ATTACHMENT A

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believes that the interests of the public, the Commission and UniDial itself can best be served at this time through settlement. The amount of the voluntary contribution is significant, reflecting how seriously the Commission considers unauthorized carrier changes. At the same time, the amount of the payment reflects the mitigating factors in this case, including UniDial's long-standing regulatory compliance efforts, its own early and self-initiated actions to remedy the problem, its attempt (which it believes has been successful) to resolve every complaint to the customer's satisfaction, regardless of cost, and its efforts to ensure that similar problems do not arise in the future.

If you have any questions, or wish to discuss this matter further, please do not hesitate to contact the undersigned.

Respectfully submitted,



Warren A. Fitch
Marcy Greene

cc: John Greive, Esq.