

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

RECEIVED

MEMORANDUM

May 7, 1998

MAY - 7 1998
11:55
FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (COX) *MCB for wife*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *VB*
DIVISION OF CONSUMER AFFAIRS (STOKES) *SA*

RE: DOCKET NO. 971483-TI - INITIATION OF SHOW CAUSE
PROCEEDING AGAINST UNIDIAL INCORPORATED FOR VIOLATION OF
RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE
CARRIER SELECTION

AGENDA: 05/19/98 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971483TI.RCM

CASE 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 has 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, staff 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 show cause proceedings, Unidial submitted an offer to settle the case. (Attachment A, Pages 5-8)

DOCUMENT NUMBER-DATE

05154 MAY-78

FPSC-RECORDS/REPORTING

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by UniDial to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection? (Biegalski)

RECOMMENDATION: Yes. (Biegalski)

STAFF ANALYSIS: On January 16, 1998, UniDial met with 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 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 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 Call Central, the agent, has been terminated.

On January 28, 1998 UniDial submitted its offer to settle. Thereafter, UniDial made itself available to staff to answer any questions regarding the complaints and the settlement offer. In its settlement offer UniDial agreed to do the following:

- 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.
- 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).

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- 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.

- UniDial will make a contribution in the amount of \$125,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing.

Staff supports 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. Staff believes this will allow UniDial to better evaluate the information on the LOA to reduce the occurrence of forgery. Staff also supports 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. Staff believes 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 each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$125,000.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$125,000 voluntary contribution within five business days after the order approving the settlement becomes final. Upon submittance of the \$125,000 settlement, this docket should be closed. The \$125,000 settlement should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Cox)

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 1, this docket should remain open pending the remittance of the \$125,000 voluntary contribution. The voluntary contribution should be submitted within five business days after the order accepting the settlement becomes final. Upon submittance of the \$125,000 settlement, this docket should be closed.

MARCY A. GREENE
ATTORNEY-AT-LAW

SWIDLER
&
BERLIN
CHARTERED

ATTACHMENT A
DOCKET NO. 971483-TI
MAY 7, 1998

DIRECT DIAL
(202)424-7856
MAGREENE@SWIDLAW.COM

January 28, 1998

Via Overnight Delivery

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

RECEIVED

JAN 29 1998

0111

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 1833131), 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.

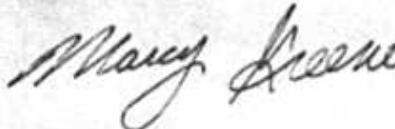
⁵ UniDial currently requires that all telemarketing generated orders be verified by an independent third party, in accordance with F.A.C. 25-4.118(2)(c) and 47 C.F.R. §64.1100(c).

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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.