

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-1022  
of UniDial, Inc., Louisville, )  
Kentucky, seeking authority to )  
operate as a resale carrier of ) GRANTED  
intrastate InterLATA and Intra- )  
LATA telecommunications services )  
within the State of Nebraska. ) Entered: December 13, 1993

APPEARANCES

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PRELIMINARY MATTERS

By application filed August 24, 1993, UniDial, Inc., ("UniDial"), Louisville, Kentucky seeks authority to provide intrastate InterLATA and IntraLATA interexchange long distance telecommunications services in Nebraska.

The Omaha Daily Record published notice of the application August 25, 1993 in accordance with the Commission's Rules of Procedure. No one protested the application. Hearing on the application was held November 5, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Johnson chaired the hearing.

At the hearing, premarked Exhibits 1 through 7 were offered and accepted. These exhibits included a copy of the applicant's articles of incorporation, certificate to do business in Nebraska as a foreign corporation, and a proposed tariff. The filed application, upon which the published notice was based, does not seek a certificate to provide alternate operator service ("AOS"). We note this Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.<sup>1</sup>

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<sup>1</sup> We observe that a late-filed amendment to add AOS to the authority sought in the original application is an inadequate solution; the previously published notice of the application would then not accurately reflect the authority sought by the applicant.

BY THE COMMISSION

## OPINION AND FINDINGS

Upon consideration of the application, the governing statutes and rules<sup>2</sup> the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

Nebraska was divided into three Local Access Transport Areas ("LATAs") due to the terms of the Modified Final Judgment in the AT&T divestiture case. United States v. American Telephone & Telegraph Company, 552 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 Company, 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. section 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 services also subject to the provisions of statute. This was recognized by the Nebraska Legislature in LB 835 (Laws 1986) because interexchange services (which includes resellers) in section 86-805 are referenced to in section 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale in deciding reseller applications.

Bruce Widener, Vice President of Product Development for UniDial, testified on the applicant's behalf. According to the application, and as described in Widener's testimony, UniDial intends to provide resold intrastate direct dialed long distance, 800 number, and travel card telecommunications service between points within Nebraska. Services are to be provided 24 hours a day, seven days a week. Intrastate telecommunications services are offered in conjunction with interstate service.

UniDial offers a variety of long distance service options. Customers may choose either switched or dedicated access services based on their calling volume. UniDial offers direct dialed 1+ calling that allows callers to place outbound calls to any valid terminating location. Inbound 800 service is also offered. Inbound 800 service allows UniDial's subscribers to make use of "toll free" 800 calling for use by their own customers or employees. When an 800 call is placed, UniDial's 800 service customer

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<sup>2</sup> Interexchange reseller applications are governed by Nebraska Rev. Stat. Sec. 75-604 and 86-805 (1990 and 1987 RES, respectively) entitled 291, NAC Chap. 5, Rule 003.12.

(rather than the call originator) is billed for the call. A Travel Card Service is also available which permits callers to use UniDial's service while traveling. UniDial's services are offered with three term levels. A month to month service is UniDial's basic service package. Customers may choose to commit to a 12 month or 24 month term agreement in return for reduced rates.

All of UniDial's services are provided using resold telecommunications facilities of other service providers. UniDial intends to use WilTel as its underlying interexchange carrier. UniDial relies on WilTel for all network operations and technical expertise. This arrangement allows UniDial to concentrate on providing responsive, high quality customer service at low prices. As a result, customers are able to take advantage of quality transmission services provided by reputable carriers while receiving competitive pricing from UniDial.

Customers are billed directly by UniDial for services provided by the company. UniDial's name, address and telephone number appear on each customer's bill. UniDial also provides a toll free telephone number for billing inquiries and customer assistance.

In terms of the company's technical and managerial experience and ability, UniDial does not own or lease switching equipment or transmission facilities. The company relies upon the technical expertise of its underlying carrier, but UniDial's management team includes individuals with experience in the provisioning of quality telecommunications services and business management.

To provide non-facility based reseller service, UniDial follows WilTel's tariff provisions to meet the telecommunications traffic usage volumes necessary to qualify for discounts available under those tariffs. UniDial pays the underlying carrier for such usage and rebills UniDial's customers, at the same time, passing on to them the share of the higher discounts made possible by the pooling of their traffic with other UniDial customers.

UniDial is a privately held Kentucky corporation which was incorporated in February of 1993. Shareholders who own five percent or more of the company's voting securities are J. Sherman Henderson, Finley J. Garvin, and Jeff Slater. These individuals are also officers of the company. No state commission has rejected an application by UniDial for reseller authority, nor has a formal complaint ever been filed against UniDial by a state utility or public service commission.

The applicant intends to provide service throughout Nebraska to residential and business subscribers. There is no plan to locate equipment or personnel within the State.

UniDial's tariff is time of day sensitive; there is no mileage sensitivity in the tariff. Instead, rates are day and hourly rated. No other state regulatory agency has required the applicant to procure a performance bond.

UniDial provided a projected balance sheet and projected income statement as its only evidence regarding the financial condition of the company. As noted previously, this company is new and was incorporated in 1993. Examining Exhibit 7, UniDial projects that in the first year it will have total assets of \$7.3 million of which \$40,700 are in net fixed assets and cash of \$350,000. UniDial projects it will have a net accounts receivable of \$3.325 million in the first year. According to UniDial, at the end of year one the company will show a profit a \$814,000 on sales of \$12.975 million in long distance service with a gross margin of \$3.205 million and total operating expenses of \$1.696 million. UniDial also projects a profit in year two of \$4.971 million and in year three of \$8.99 million.

The applicant's proposed tariff which is part of the its application is in accordance with the Commission's rules and regulations. The tariff appears reasonable in light of the proposed service.

Based on the testimony, the exhibits, and the proposed tariff, the application is fair and reasonable, is in the public interest, and should be granted.

Since no physical plant will be installed in Nebraska pursuant to a grant of authority, there is no duplication of facilities and no consideration of that issue pursuant to section 75-604 is required.

#### ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1022 be, and it is hereby, granted and UniDial, Inc., Louisville, Kentucky is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the state of Nebraska.

IT IS FURTHER ORDERED that the applicant shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to the stockholders, and (c) 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 the applicant file an updated tariff prior to offering service pursuant to the certificate granted this order.

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

MADE AND ENTERED at Lincoln, Nebraska this 13th day of December, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Duane D. Gay*

//s//Rod Johnson

//s//Frank E. Landis, Jr.

//s//James F. Munnely

*Frank E. Landis, Jr.*  
Chairman

ATTEST:

*Robert R. Long*  
Executive Director