

Decision 97-03-036 March 18, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of UniDial, Inc. to Amend Its Certificate of Public Convenience and Necessity to Permit It To Resell Local Exchange Service in California.

Application 96-10-039  
(Filed October 21, 1996)  
(Amended January 30, 1997)

**O P I N I O N**

**ORIGINAL**

UniDial, Inc. (applicant), a Kentucky corporation authorized to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell local exchange service as a competitive local carrier<sup>1</sup> (CLC) within the prescribed service territories of Pacific Bell and GTE California (GTEC) subject to the rules adopted in Rulemaking (R.) 95-04-043. Applicant previously received authority to resell inter-Local Access and Transport Area (LATA) services by Decision (D.) 94-02-009 and intraLATA services by D.94-12-037. Applicant also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the issuance of stocks and other evidences of ownership and bond, notes, and other evidences of indebtedness.

By D.95-07-054 (R.95-04-043/Investigation 95-04-044), we established initial procedures for the filing for CPCN authority to offer competitive local exchange service within the service territories of Pacific Bell and GTEC. Prospective CLCs who filed petitions by September 1, 1995, for CPCN authority to enter the local exchange market and otherwise met eligibility requirements were authorized to offer local exchange service under the following schedule. Competitive local exchange service for facilities-

<sup>1</sup> A competitive local carrier is a common carrier that is issued a certificate of public convenience and necessity to provide local exchange telecommunications service for a geographic area specified by such carrier.

based carriers was authorized effective January 1, 1996. Competitive resale of the bundled local exchange service of Pacific and GTEC was authorized effective March 31, 1996. Any subsequent filings for CLC CPCN authority after September 1, 1995, were to be treated as applications and processed in the normal course of the Commission's business.

We have reviewed the applicant's CPCN filing and conclude that it has met the financial requirements set forth in our adopted rules for CLC entry, and that it has provided an adequate showing of technical and professional expertise. A CLC reseller must demonstrate that it has a minimum of \$25,000 of cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up expenses as prescribed in Rule 4.B.(2) of D.95-07-054. CLCs must also conform to the following financial requirements adopted in D.95-12-056. CLCs with no prior established credit record who order interconnection service from an incumbent local exchange carrier (LEC) must also pay a deposit equal to an estimated two months or recurring flat-rated or usage-based interconnection charges based on the number and type of interconnection facilities ordered from the LEC. Customer deposits collected by a CLC must be deposited in a protected, segregated interest-bearing escrow account subject to Commission oversight.

Applicants must also submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. We have reviewed applicant's proposed tariff filing and conclude that it conforms to the adopted Commission rules, including the Consumer Protection Rules set forth in Appendix B of D.95-07-054, except for the deficiencies noted in Appendix B.

As part of its application applicant provided an audited financial statement, including a balance sheet and statement of cash flows demonstrating that applicant has more than \$25,000 cash and a guarantee to maintain at least that amount available at all times. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant filed a motion for a protective order for that portion of its application which provides a forecast of the number of customers expected after years one and five, stating that it contains commercially sensitive and competitively significant data that would do harm to applicant if revealed. No opposition to the motion was filed and the motion was granted by ruling of the Law and Motion Administrative Law Judge on December 6, 1996.

Applicant has provided information on its key managers indicating their education, training and experience. It demonstrates that they have extensive experience in telecommunications.

We have reviewed applicant's proposed filing and conclude that it conforms to the adopted Commission rules including the Consumer Protection Rules set forth in Appendix B of D.95-07-054, except for the deficiencies noted in Appendix B. With that qualification, the application is approved as set forth below.

#### **Findings of Fact**

1. Applicant filed its application on October 21, 1996, for authority to resell local exchange services as a CLC in the service territories of Pacific Bell and GTEC and filed an amendment to the application on January 30, 1997, addressing various deficiencies.

2. Applicant served a copy of the application on 64 companies certificated as competitive local carriers in California.

3. Applicant was previously granted authority to provide inter-LATA services by D.94-02-009 and intraLATA service by D.94-12-037.

4. A notice of the filing of the application appeared in the Commission's Daily Calendar on November 6, 1996.

5. No protests have been filed.

6. A hearing is not required.

7. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific Bell and GTEC.

8. By D.95-07-054, D.95-12-056, D.96-02-072 and D.96-03-020, we authorized facilities-based CLC services effective January 1, 1996, and CLC resale services effective March 31, 1996.

9. Applicant has demonstrated that it has a minimum of \$25,000 of cash or cash equivalent reasonably liquid and readily available to meet its start-up expenses.

10. Applicant's technical experience is demonstrated by the descriptions of the background qualifications of UniDial officers.

11. Applicant has submitted with its application a draft of an initial tariff which complies with the requirements established by the Commission, except for the deficiencies identified in Appendix B of this order.

12. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

13. The Commission has routinely granted nondominant telecommunications carriers, such as applicant, an exemption from Rule 18(b) where no construction is involved to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

14. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

15. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851.

#### **Conclusions of Law**

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has made a reasonable showing of technical expertise in telecommunications.

3. Public convenience and necessity require the competitive local exchange services to be offered by applicant, subject to the terms and conditions set forth below.

4. Applicant is subject to:

- a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund Universal Lifeline Telephone Service Fund (PU Code §879; Resolution T-15799, November 21, 1995);
- b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Services and Communications Fund (PU Code § 2881; Resolution T-15801, October 5, 1995);
- c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1996-1997 fiscal year (Resolution M-4782);
- d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp.3-4, App. B, Rule 1.C, set by Resolution T-15987 at 0.0% for 1997, effective February 1, 1997.)
- e. The current 2.87% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and
- f. The current 0.41% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area of and service of all exhibits attached to this application on potential competitors.

6. Applicant should be exempted from PU Code §§ 816-830.

7. Applicant should be exempted from PU Code § 851 when the transfer or encumbrance serves to secure debt.

8. The application should be granted to the extent set forth in the order below.

9. Any competitive local carrier which does not comply with our rules for local exchange competition adopted in Order Instituting Rulemaking 95-04-043 shall be subject to sanctions including, but not limited to, revocation of its certificate.

10. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to UniDial, Inc. (applicant) to operate as a reseller of competitive local exchange services, subject to the terms and conditions set forth below.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding.

3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and must include a satisfactory correction of each deficiency listed in Appendix B in this decision. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with the provisions in its tariffs.

b. Applicant is a competitive local carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix A, Section 4.E of Decision (D.) 95-07-054:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards [Contracts shall be subject to GO 96-A rules for NDIECs, except those for interconnection]:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

"(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

"(3) Uniform minor rate increases, as defined in D.95-07-054, shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.

"(4) Advice letter filing for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice to the Commission.

"(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission."

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

5. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

6. Prior to initiating service, applicant shall provide the Commission's Consumer Services Division with the applicant's designated contact person(s) for the purposes of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

7. Applicant shall notify this Commission in writing of the date local exchange service is first rendered to the public within five days after local exchange service begins.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

9. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the Commission's auditing and compliance staff and contained in Appendix A.

10. Applicant shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

12. The corporate identification number assigned to applicant for its competitive local exchange service is U-5359-C, which is the same number applicant was assigned for its inter- and intraLocal Access and Transport Area service previously authorized. That identification number shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

14. Applicant is exempted from the provisions of PU Code §§ 816-830.

15. Applicant is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

16. Applicant is exempted from Rule 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

17. If the applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of the division to file or remit late.

18. Applicant shall comply with the customer notification and education rules adopted in D.96-04-049 regarding passage of calling party number.

19. Applicant's customer projections placed under seal shall remain under seal as set forth in the Law and Motion Administrative Law Judge's Ruling of December 6, 1996.

20. The applicant is granted as set forth above.



A.96-10-039 ALJ/PSW/wav

21. Application 96-10-039 is closed.

This order is effective today.

Dated March 18, 1997, at San Francisco, California.

P. GREGORY CONLON  
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

APPENDIX A  
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

TO: ALL COMPETITIVE LOCAL CARRIERS

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for Competitive Local Carriers in California. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

APPENDIX A  
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INFORMATION REQUESTED OF COMPETITIVE LOCAL CARRIERS

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX A)

Appendix B  
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List of Deficiencies in Tariffs Filed by Unidial's tariff filing in A.96-08-017 to be corrected in Tariff Compliance Filing.

Hereinafter, "Tariff Schedule 1" refers to Ca. P.U.C. No. 1, of the sample tariffs accompanying Unidial's Application, as revised by its January 29, 1997, filing.

1. Please include sample forms in your tariff.
2. Unidial's current IEC tariff on file with the CPUC contains one schedule, designated as "Schedule Cal P.U.C. No. 1-T, Sheet No.1, etc." Fix Unidial's IEC tariff numbering system to conform with that used in its IEC tariff.
3. Rate tables. If Unidial intends to charge rates in those exchanges currently served by GTEC that are different from those charged in Pacific's exchanges, Unidial needs to state those rates separately.
4. Tariff Schedule 1, Sheet 5-T, Preliminary Statement. State Unidial has been granted authority to provide resale of telecommunications services in California. Specify if Unidial will serve only business customers.
5. Tariff Schedule 1, Sheet 6-T include a Service Area Map showing Telephone Exchange Areas in California. The map was omitted in the January 29, 1997 filing.
6. Tariff Schedule 1, Sheet 11-T. Delete heading caption *Explanation of Rate Schedules* if it is no longer used.
7. Tariff Schedule 1, Sheet 83-T, 7.1 states "The advance payment will not exceed an amount up to two months of estimated monthly usage charges." The advance payment cannot exceed the nonrecurring charges and the first month's recurring rate. The advance payment must be credited on the first bill. Advance payments cannot be required for usage charges. Add these requirements to the tariff.
8. If Unidial is offering residential service, it must offer Universal Lifeline Telephone Service (ULTS). Unidial must inform its customers of the availability of this service at the time service is ordered. Since Unidial has confirmed that it will be offering service to residential customers, include a tariff for ULTS.

**Appendix B**  
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9. **Tariff Schedule 1, Sheet 97-99-T, Liability of the Company. Include the specific the limitations of liability sections of Pacific Bell's tariff with which Unidial is concurring. The specific limitations of liability provisions must be included in Unidial's tariff, not simply the reference thereto.**
10. **Unidial, Inc. must have a demarcation tariff or concur in another company's tariff. Specify the appropriate section in Pacific Bell's tariff with which Unidial is concurring.**
11. **Tariff must be available for inspection at an office in California. It is not sufficient to refer to the CPUC.**
12. **Add tariff statement saying with which other carriers will offer DDTP services (Deaf and Disabled Equipment Distribution Program.) See D.95-12-056, Appendix C, p. 11, Rule F.10. The revised tariff language says that Unidial will provide the service.**

**End of Appendix B**