

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of the tariff of UCN, INC. to establish)	
an Instate Connection Fee and an Instate Cost Recovery)	Case No.
Charge)	Tariff No. JX-2006-0675

OFFICE OF THE PUBLIC COUNSEL’S
MOTION TO REJECT TARIFF OR, IN THE ALTERNATIVE, TO SUSPEND
TARIFF

The Office of the Public Counsel asks the Public Service Commission of Missouri to reject UCN, Inc.’s proposed tariffs to establish an Instate Connection Fee and an Instate Cost Recovery Charge. These proposed fees and charges are unlawful, unreasonable, unjust, discriminatory, and misleading to consumers. In the alternative, Public Counsel asks the Commission to suspend the tariffs and hold an evidentiary hearing on the tariffs.

The Instate Connection Fee is similar to the instate access recovery fees levied by AT&T, MCI, TeleComUSA and Sprint Communications, Inc. in the Cases No. TT-2002-129, TT-2002-1136, XT-2003-0047, LT-2004-0616 and XT-2004-0617, now the subject of Public Counsel’s Writ of Review in the Cole County Circuit Court. (St. ex rel. Public Counsel v. Public Service Commission, Case No. 06AC-CC 00080. The fee seeks to impose on customers a flat \$2.49 fee without providing any new, improved or additional service, and in fact, without providing any service or benefit to the customer. It is solely a special surcharge designed to impose a separate new fee for “LEC Network Access charges” which are charges that historically have been part of the per minute rates charged to consumers by UCN and other IXC’s. This charge is levied on customers allegedly to recover “excessive and disproportionate” access charges of Missouri local

exchange companies; however, the adoption of the tariff is not accompanied by any reduction in the per minute or minimum charges. Therefore, the instate connection fee is nothing more than a price increase disguised as a form of a cost recovery mechanism with the intent to distort the rate structure and inhibit and prevent the ability of consumers to compare prices and to hide from the customer the true nature and impact of the flat rate surcharge. The fee is not usage sensitive even though the IXC incurs access costs on a usage sensitive basis. Further, separation of the costs of providing long distance service from the tariffed and published rates is deceptive marketing. It also encourages an IXC to add special charges to recover its operating costs and thus rewards inefficiency by passing costs directly to the customer while at the same time touting low per minute rates. This is inconsistent with the promotion of competition and the protection of the ratepayer and the protection of the public interest (Section 386.185 (6) RSMo) and the PSC's duty to ensure that ratepayers only pay reasonable charges (Section 392.185 (4) RSMo).

The connection fee also violates Section 392.200, RSMo 2000 because the charge is discriminatory in that it exempts UCN's local customers without reasonable justification for this exemption and discriminatory treatment. This would also discriminate against rural customers in less dense population areas not served by the company for local exchange service. In addition, it is discriminatory in that by using a flat fee cost recovery method to recover a usage sensitive cost causing operating cost, it discriminates against low volume users as compared to high volume users and against residential users as compared to business users since business users typically have higher volumes of toll calls than most residential customers. Also, with a flat charge as the basis of cost recovery, there is no justifiable or reasonable basis provided that demonstrates

that the \$2.49 connection fee, or any other flat rated connection fee has a reasonable relationship to the costs the company seeks to recover from the customers.

The notice of the imposition of the charge is defective and insufficient to provide adequate notice of the amount and the purpose of the charge. The notice fails to set forth the amount of the proposed connection fee to be levied in Missouri, thereby providing no notice to the customer. The notice only refers customers to the company's website and the hyperlink to another website (unidentified) that purports to provide the "state-by-state ISCF effective rates" instead of giving actual and meaningful notice. The customers should be able to learn from the face of the notice without resorting to outside sources the most elementary information about a new or increased charge: "how much do I have to pay?" Forcing customers to look to other separate sources, and especially sources which can only be accessed by a computer that the customers may not own or have easy access. The effectiveness of the notice should not depend on the ability or inability of a customer to use a computer or have access to a computer at the time the customer receives and reads the notice. The notice is unreasonable and inconsistent with the rights of the ratepayer and the public interest.

The notice is also vague as to the basis for the unknown instate connection fee. The notice is misleading as it incorrectly states that its local customers will not cause the company to incur excessive and disproportionate access fees when calls from these local customers are terminated to the same local exchange companies as non local UCN customers.

While the tariff purports to limit this connection fee to instate customers, it does not exempt charges to the accounts of instate customers for minimum usage or monthly

recurring charges or for interstate calls. As a result the customer will be charged even when the customer makes no instate calls during a month or longer times periods. The effect of the tariff is to impose an instate connection fee when there is no basis in fact to make such a charge to the customers. Also, by assessing this flat fee on an account that contains interstate calls, the company is effectively charging different rates for long distance service in Missouri than it does in other states without the connection fee or with a lower connection fee, in violation of the Federal Telecommunication Act of 1996, Section 254 (g) : **“Interexchange and Interstate Services:** Within 6 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.”

COST RECOVERY CHARGE

The Cost recovery charge tariff is unjust and unreasonable in that it is vague, overbroad, and fails to give adequate notice of the type, nature and identity of the “annual regulatory compliance fees, foreign corporation maintenance and other costs” that purportedly are the basis for the charge. The tariff fails to provide how the “other costs” are related to telecommunications and the provision of services in Missouri or any other nexus with the charge the company proposes. The tariff does not limit the “recovery” to costs associated with Missouri and does not exclude costs incurred by the

company but included in separate surcharges (USF, city, county, state sales and franchise fees) or costs that are included in rates (state regulatory assessments, earnings, property, state and local income taxes) or items that would reasonably be excluded from recovery (fines, penalties, above market price interest and fees on borrowing and other services).

The notice fails to provide adequate notice of the contents of the elements that fall within the scope of the charge or provide meaningful notice of the costs the charge is intended to recover.

BOTH FEES AND CHARGES

The proposed tariffs violate 4 CSR 240-33.045, Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills. The rule provides:

(1) All telecommunications companies shall provide a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering. Such disclosure shall be provided prior to an agreement for service. This disclosure shall be in addition to the itemized account of monthly charges during the customer's first billing period for the equipment and service for which the customer has contracted, as required by 4 CSR 240-33.040(8). Allowed charges that may vary, depending on the location of the customer or the amount of the customer bill, can simply be identified without specifying the specific dollar amount that would be applied to the customer.

(2) Telecommunications companies shall not include on a customer's bill any charge misrepresented as governmentally mandated or specifically authorized by:

(A) Disguising it;

(B) Naming, labeling or placing it on the bill in a way that implies that it is governmentally mandated or specifically authorized; or

(C) Giving it a name or label that is confusingly similar to the name or label of a governmentally mandated or specifically authorized charge.

3) Governmentally mandated or specifically authorized charges include, but are not limited to, separately identified charges to recover costs associated with any monthly charge mandated or specifically authorized by federal, state or local government. These monthly charges shall be identified on the customer's bill in easy to understand terms and in a manner consistent with their purpose or applicability.

(4) Companies imposing separately identified charges that appear to be governmentally mandated or specifically authorized charges shall provide, upon request by the

commission staff, such federal, state or local government order, decision, ruling, mandate or other authority on which it relies in placing such a charge on the customer's bill.

(5) To challenge the authority or legality of a tariffed charge under this rule, a party shall file a complaint pursuant to 4 CSR 240-2.070. The commission may order removal or modification of any charge it finds does not comport with this rule. Nothing in this rule will preclude the commission from suspending or rejecting company tariffs when similar or identical tariffs have been approved for other companies.

(6) Any telecommunications company that serves as a billing agent for another entity shall not be held liable for any violation of this rule for that portion of the customer bill that relates to that other entity.

(7) This rule establishes minimum requirements for clarity in billing separately identified charges.

(emphasis added)

The proposed tariffs are not **“a clear, full and meaningful disclosure of all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering.”**

For the foregoing reasons, Public Counsel asks the Commission to reject the tariffs or, in the alternative, suspend the tariffs and hold an evidentiary hearing pursuant to Section 386.330.1, RSMo and Section 392.230. 3 and 4, RSMo.

Respectfully submitted,

/s/ **Michael F. Dandino**

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the following this 28th day of March, 2006.

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RECEIVED

MAR 07 2006

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March 6, 2006

Via Overnight Courier

Office of the Secretary
Missouri Public Service Commission
200 Madison Avenue
Governor Office Building
Jefferson City, Missouri 65101

*Re: UCN, Inc.
Revisions to Missouri PSC Tariff No. 2*

Ladies and Gentlemen:

On behalf of UCN, Inc. ("UCN"), transmitted herewith is an original plus fourteen (14) copies of revisions to its Missouri PSC Tariff No. 2. UCN's revisions are issued March 7, 2006, to be effective April 7, 2006, on thirty (30) days' notice.

This filing introduces the In-State Connection Fee (ISCF) and In-State Cost Recovery Charge (ISCRC). Customer notice has been provided to affected customers via billing invoice message. See Exhibit A.

The purpose of the ISCF is to recover a portion of excessive or otherwise disproportionate switched access charges levied on UCN by incumbent, as well as competitive, local exchange companies for long distance services provided in the state. Switched access charges are imposed on long distance carriers by local exchange companies as the price for originating and terminating long distance calls on the local facilities that serve the end use customer. Switched access charges vary widely between and among local phone companies. UCN does not incur excessive or disproportionate switched access charges on behalf of customers where it is also the customer's local exchange provider. Therefore, such customers are exempt from the ISCF and are not affected by the proposed tariff revision.

The purpose of the ISCRC is help UCN recoup costs associated with its compliance with state regulations, programs and other matters necessary to ensure maintenance of UCN's license and authority to conduct business in the state.

An additional copy of this filing is also enclosed, to be date-stamped and returned in the postage prepaid envelope provided.

Should there be any questions regarding this filing, kindly contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'J. Marashlian', written in a cursive style.

Jonathan S. Marashlian
Regulatory Counsel

EXHIBIT A

Customer Notice – Via Invoice Message

Beginning with the April invoice, customers taking long distance services in certain states will be charged an in-state connection fee (ISCF) and in-state cost recovery charge (ISCRC). The ISCF recovers costs imposed by the local carrier and varies state-to-state. The ISCF recovers certain regulatory costs. For more information please visit www.ucn.net or call our toll-free customer service number.

Customer Notice – Via UCN Website

Notice of the Implementation of In-State Connection Fee (ISCF):

Effective no later than April 15, 2006, where applicable and/or authorized by tariff on file with your state utility commission, UCN will implement a monthly in-state connection fee (ISCF). The purpose of the ISCF is to recover a portion of excessive or otherwise disproportionate switched access charges levied on UCN by incumbent, as well as competitive, local exchange companies for long distance services provided in your state. Switched access charges are imposed on long distance carriers by local exchange companies as the price for originating and terminating long distance calls on the local facilities that serve the end use customer. Switched access charges vary widely between and among local phone companies. UCN does not incur excessive or disproportionate switched access charges on behalf of customers where it is also the customer's local exchange provider. Therefore, such customers are exempt from the ISCF. The ISCF is not a government-mandated charge.

The ISCF varies in each state where authorized. For more information on the ISCF applicable in your state, please click here [[hyperlink to state-by-state ISCF effective rates](#)]

Notice of the Implementation of In-State Cost Recovery Charge (ISCRC):

Effective no later than April 15, 2006, where applicable and/or authorized by tariff on file with your state utility commission, UCN will implement a monthly cost recovery charge associated with providing intrastate long distance services. The ISCRC is a monthly service charge to recover UCN's cost of regulatory compliance and other expenses which cannot otherwise be recovered equitably through per minute rate increases and is a necessary step for UCN to continue providing affordable services in your state. The ISCRC equates to 2.99% of your intrastate usage charges. This charge does not contribute towards any applicable minimum monthly charge. The ISCRC is not a government-mandated charge.

SECTION 4 - MISCELLANEOUS**4.1 General**

Each Customer is charged individually for each call placed through the Company. Charges may vary by service offering, class of call, time of day, day of week, class of call and/or call duration.

4.2 Late Payment Charge

The company will charge a one-time 1.5% late payment fee on all invoices not paid by the due date identified on the Company bill.

4.3 In-State Connection Fee

N/I

A monthly service charge will be applied to each intra-state long distance Customer's account to recover the Company's cost of LEC Network Access charges. This monthly charge is applied if a Customer has \$0.01 or more of new billable charges on their bill, including, but not limited to, monthly recurring charges, or minimum usage charges. This charge does not contribute towards any applicable minimum monthly charge. This charge is not applied to customers who also subscribe to Company's local exchange services. Customers in Lifeline programs are exempt from this service charge.

	<u>Monthly Charge</u>
In-State Connection Fee	\$2.49

4.4 In-State Cost Recovery Charge

A monthly service charge will be applied to each intra-state long distance Customer's account in order to recover certain costs associated with the Company's compliance with annual regulatory compliance fees, foreign corporation maintenance and other costs. This monthly charge is applied if a Customer has \$0.01 or more of new billable charges on their bill, including, but not limited to, monthly recurring charges, or minimum usage charges. This charge applies strictly to intrastate usage. This charge does not contribute towards any applicable minimum monthly charge. Customers in Lifeline programs are exempt from this charge.

	<u>Amount</u>
In-State Cost Recovery Charge (ISCRC)	2.99% of intrastate usage

N/I

Issued: March 7, 2006

Effective: April 7, 2006

Paul Jarman, President
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