

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

In re the matter of UCN, Inc. to establish )  
an Instate Connection Fee and an Instate )  
Cost Recovery Charge )

Case No. XT-2006-0371  
Tariff File No. JX-2006-0675

**STAFF’S RESPONSE TO OFFICE OF THE PUBLIC COUNSEL’S MOTION TO SUSPEND TARIFF AND  
FOR EVIDENTIARY AND PUBLIC HEARINGS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response states:

1. On March 28, 2006, the Office of the Public Counsel filed a motion requesting the Commission to suspend UCN, Inc.’s tariff sheet of March 7, 2006, with an effective date of April 7, 2006, introducing a \$2.49 monthly service charge, or “In-State Connection Fee,” and an In-State Cost Recovery Charge set at 2.99% of a customer’s intrastate usage. The Commission suspended the tariff sheet through May 7, 2006 and granted the company and Staff an opportunity to respond to the Office of Public Counsel’s allegations. Attached to this pleading as Appendix A is Staff’s analysis of the relationship of the proposed charges with the Commission’s new rule at 4 CSR 240-33.045 as well as the other factual aspects of the Office of Public Counsel’s points.

**The New Commission Rule.**

2. The Commission promulgated the rule at 4 CSR 240-33.045 to “requir[e] clear identification and placement of separately identified charges on customer bills” (the title of the rule) with an effective date of October 30, 2005. To the best of Staff’s knowledge, the Commission has never previously interpreted this rule and this case provides the first opportunity for the Commission to do so. In its discussion in Staff’s attached recommendation, Staff reviews

the terms of UCN, Inc.'s surcharges and concludes that the surcharges, as UCN, Inc. proposes to implement them, appear to violate the terms and intent of the Commission's rule.

### **The Claims of Discrimination.**

3. Although it has not previously addressed considerations related to the new rule governing separately identified charges, the Commission *has* addressed the other points raised by the Office of Public Counsel's *Motion to Reject Tariff*, at least as they pertain to instate connection fees and surcharges. The Commission did so in a case now on appeal to the Cole County Circuit Court as *State ex rel. Public Counsel v. Pub. Serv. Comm'n*, Case No. 06AC-CC00080. The Commission issued its Report and Order on December 13, 2005 in the consolidated docket of Case No. TT-2002-129 to address instate connection fees of AT&T Communications of the Southwest, Inc.; Sprint Communications Company, L.P.; MCI Communications Services, Inc.; and Teleconnect Long Distance Services and Systems Company.

4. Specifically, the Commission found that the intrastate long distance market in Missouri is highly competitive.<sup>1</sup> The Commission found that for many years telecommunications companies have placed business and residential customers in different customer classes and acknowledged distinctions between the classes.<sup>2</sup> The Commission discussed the alleged discrimination against low volume users in favor of high volume users; the alleged discrimination against residential customers in favor of business customers; and the alleged discrimination against rural Missouri long distance customers in favor of customers who have the option to obtain local service from the company who would then waive the surcharge.<sup>3</sup>

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<sup>1</sup> Report and Order, *In the Matter of AT&T Communications of the Southwest, Inc.'s Proposed Tariff to Establish a Monthly Instate Connection Fee and Surcharge*, Case No. TT-2002-129 et al. (December 13, 2005), at 8.

<sup>2</sup> *Id.* at 9-10.

<sup>3</sup> *Id.* at 16-19.

In response to all of these arguments, the Commission found that the monthly instate connection fees and surcharges proposed in Case No. TT-2002-129 and related cases did not unduly discriminate against any Missouri customer.

5. As it has in other cases where the Commission has considered similar surcharges, Staff notes that the Commission has granted UCN, Inc. competitive status as a provider of competitive telecommunications service.<sup>4</sup> The Office of Public Counsel has indicated concern that the “instate connection fee is nothing more than a price increase disguised as a form of a cost recovery mechanism,” but a competitive company may increase its prices by complying with the requirements of Section 392.500.2 RSMo. 2000, which permits increases in rates with a tariff filing and notice to customers at least ten days prior to the implementation. In this case, UCN, Inc. has complied with this statutory requirement by properly filing a tariff sheet describing the rate increase.

**Conclusion.**

6. Therefore, Staff recommends that the Commission reject the tariff filing because it fails to meet the requirements of 4 CSR 240-33.045, and notes that the Commission has otherwise previously addressed the other claims raised by the Public Counsel’s motion.

WHEREFORE, for the foregoing reasons, Staff respectfully requests the Commission to decline to approve UCN’s tariff proposal.

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<sup>4</sup> The Commission granted competitive status to the IXC services of Buyers United, Inc. d/b/a United Carrier Networks, in Case No. XA-2003-0554 (July 23, 2003); the Commission authorized a change of corporate name to “UCN, Inc.” in Case No. XN-2005-0072 (October 19, 2004).

Respectfully submitted,

**/s/ David A. Meyer**

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#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 11<sup>th</sup> day of April 2006.

**/s/ David A. Meyer**

## Memorandum

To: Official Case File  
Case No. XT-2006-0371 (Tariff File No. JX-2006-0675)

From: John Van Eschen   
Telecommunications Department

Date: April 11, 2006

Subject: UCN, Inc.'s proposed In-State Connection Fee and In-State Cost Recovery Charge

On March 7, 2006 UCN, Inc. (UCN) submitted a proposed tariff to establish an In-State Connection Fee and an In-State Cost Recovery Charge. On March 16, 2006 the Commission Staff (Staff) routed a recommendation to allow the proposed tariff filing to go into effect. On March 28, 2006 the Office of the Public Counsel filed a Motion to Reject Tariff or, in the Alternative, to Suspend Tariff. On April 4, 2006 the Commission suspended the proposed tariff until May 7, 2006. The Commission also directed responses to Public Counsel's motion be filed on or before April 7, 2006. On April 7, 2006, Staff requested additional time in order to file a response.

The purpose of this memorandum is to respond to Public Counsel's motion. Since the filing of Staff's initial recommendation, Staff has had subsequent discussions with company officials. Staff has also reviewed UCN's response filed on April 10, 2006. Based on Public Counsel's motion and Staff's additional review of the filing, Staff will modify its initial recommendation.

Public Counsel's motion claims the proposed filing violates federal statutes, Missouri statutes and the Commission's rules. In particular Public Counsel asserts the proposed charges are inconsistent with the promotion of competition and the protection of the ratepayer and the protection of the public interest. Public Counsel also claims the proposed charges are inconsistent with the Commission's duty to ensure that ratepayers only pay reasonable charges. Public Counsel claims the In-State Connection Fee is discriminatory and violates Section 392.200 RSMo and the federal Telecommunications Act of 1996. Public Counsel also claims the notice provided to customers is defective. Public Counsel states that both charges violate Commission rule 4 CSR 240-33.045. Staff will attempt to more closely examine each of Public Counsel's claims; however Staff will first identify any existing concerns regarding the proposed tariff filing.

### **Staff Concerns Regarding the Proposed Filing**

Public Counsel states the charges violate Commission rule 4 CSR 240-33.045. Upon further investigation, Staff agrees with Public Counsel that the proposed filing

appears to violate certain portions of Commission rule 4 CSR 240-33.045. In Staff's opinion, UCN's proposed filing may violate subsections 1 and 2 of 4 CSR 240-33.045. These concerns are identified and explained below:

**UCN has failed to adequately demonstrate that consumers will be provided with a clear, full and meaningful disclosure of all charges that the customer has ordered or is considering ordering.** Commission rule 4 CSR 240-33.045(1) attempts to ensure that companies 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. In this respect consumers may be better able to make informed choices. In response to Staff's inquiry about what sort of disclosure will be given to new customers about the surcharges, company officials referred Staff to Exhibit A of the tariff submission. In addition, company officials directed Staff to the company's web site at [www.ucn.net/default.aspx?tabid=229](http://www.ucn.net/default.aspx?tabid=229) .

In Staff's opinion the company's response provides inadequate assurance that the company will provide 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. Exhibit A is simply the notice provided to existing customers. The web site address provided by the company contains a customer notice and a list of frequently asked questions about the Cost Recovery Fee. Staff notes that UCN's April 10<sup>th</sup> response states the company volunteers to post UCN's complete Missouri long distance tariff on the company's website in order to further assist existing and prospective customers' efforts to comparison shop. Despite this additional offer, unless the company provides better assurance on how it intends to disclose all monthly charges and usage sensitive rates that are applicable to the services the customer has ordered or is considering ordering the Commission should not allow the proposed rates to go into effect. In Staff's opinion, the company has been unable to provide reasonable evidence that the company will comply with Commission rule 4 CSR 240-33.045(1).

**The proposed charges may be inappropriately viewed as governmentally mandated charges due to how the charges appear on the consumer's bill and how one of the charges is described to consumers.** Commission rule 4 CSR 240-33.045(2) states that companies shall not disguise a charge as a governmentally mandated charge by "naming, labeling or *placing it on the bill* in a way that implies that it is governmentally mandated or specifically authorized...." (emphasis added) This portion of the rule is violated because these charges could easily be misinterpreted as governmentally mandated charges. Although the company's web site indicates these charges are not government-mandated charges, the company's placement of the charges in customer bills and the lack of a disclaimer on the bill, including the lack of a disclaimer on the customer notice provided in a customer's bill, suggests otherwise. In response to Staff's inquiry as to how these charges would appear on customer bills, the company states,

"The In-State Connection Fee (ISCF) and In-State Recovery Charge (ISCRC) are both non-government mandated surcharges. Therefore, UCN intends to list these charges in the 'Surcharges' portion of its customer

invoices. UCN's customer invoices currently have a summary line item entitled 'Taxes and Surcharges'. This summary item shows the total amount of taxes and surcharges in summary format. UCN's invoices also have a detailed line item entitled "Taxes", where government authorized or mandated taxes are listed and described. When the ISCF and ISCRF become effective and UCN starts billing these charges, they will be listed in a separate detailed line item entitled 'Surcharges'."

UCN's response when compared to a UCN sample bill is confusing and conflicting. The company's response states these charges may appear under a separate detailed line item entitled "Surcharges"; however the company's sample bill only reflects the line item as "Taxes and Surcharges". If the company intends to place these charges under the line item "Taxes and Surcharges" such placement will violate 4 CSR 240-33.045(2) because it will create the impression the fees are government-mandated charges. The company needs to provide further evidence of how these proposed charges comply with 4 CSR 240-33.045(2).

In Staff's opinion, the names of the proposed charges do not technically give the impression the fees are mandated or specifically authorized by the government. However, the company's description of the proposed In-State Cost Recovery charge contained in the customer notice and the company's proposed tariff may also give the consumer the impression that it might be a government-related fee but such an impression is admittedly subjective. The company's description provided on the company's web site says that the In-State Cost Recovery charge is "...to recover UCN's cost of regulatory compliance and other expenses..." The company's proposed tariff also describes the charge as "...to recover certain costs associated with the Company's compliance with annual regulatory compliance fees, foreign corporation maintenance and other costs..." The customer notice of these charges provided via an invoice message simply states, "...The ISCF recovers certain regulatory costs..." Although using terms such as "regulatory costs" and "regulatory compliance" may be accurate in describing the company's costs it is attempting to recover, such a description may violate the Commission's rule because it creates the impression the proposed fee is a government mandated fee.

### **Staff's Responses to Public Counsel's Remaining Claims**

Public Counsel raises a number of concerns regarding UCN's tariff filing. Staff will attempt to initially address these concerns.

**Public Counsel claims the proposed charges are inconsistent with the promotion of competition, the protection of the ratepayer and the protection of the public interest.** Although Staff agrees with Public Counsel that the establishment of these charges makes it more difficult for consumers to compare prices, the real issue is whether consumers will be adequately informed about the charges. As previously discussed, Staff believes UCN may violate 4 CSR 33.045(1) because the company does not appear that it will provide consumers with clear, full and meaningful disclosure of all charges that are

applicable to the services the customer has ordered or is considering ordering. In this respect Staff agrees with this portion of Public Counsel's motion.

**Public Counsel claims the proposed charges are inconsistent with the Commission's duty to ensure that consumers pay only reasonable charges.** UCN, Inc. is classified as a competitive telecommunications company. Based on this classification the company is able to raise rates on ten days notice to the Commission and to potentially affected customers. Such notice provides the opportunity for customers to decide whether to retain the company's service or switch to another provider. Conceptually, the competitive market, rather than the regulator, ensures the consumer will pay only reasonable charges.

**Public Counsel claims the company has failed to provide reasonable notice to potentially affected customers.** Public Counsel claims the customer notice is defective because it fails to identify the amount of the proposed connection fees. Rather than cite the amount of the fees, UCN's customer notice refers customers to the company's website and a hyperlink to another website in order to find out the specific amount of these fees. Although Staff agrees with Public Counsel that the notice may be more meaningful to consumers if the notice specifically identifies the amount of the fees, such lack of information does not technically violate any Commission rules. Commission rule 4 CSR 240-33.040(4) provides some guidance on customer notices in that it states that a notice can be provided via bill inserts, bill messages, electronic communications to customers that have authorized receipt of electronic notification and direct mailings. In this instance, UCN has notified potentially affected customers through a bill message. Commission rule 4 CSR 240-33.040(4) is silent on the issue of whether it is unacceptable for a customer notice to refer the consumer to a website for the specific dollar amount of the rate increase or fee. In this respect Staff believes it is acceptable for a company to simply reference its web site or a toll-free telephone number in order to get more information. Nevertheless, as previously discussed, the company's notice may still be defective by creating the impression the In-State Recovery Charge is a government mandated charge by simply describing the charge as, "...The ISCF recovers certain regulatory costs...." The customer notice provided in the company's bill lacks a disclaimer that the charge is not a government-mandated charge. Such a disclaimer is only provided on the company's web site.

**Public Counsel claims the proposed charges are discriminatory.** Public Counsel claims the proposed charges are discriminatory because they exempt UCN's local customers without reasonable justification. Public Counsel believes that such an exemption further discriminates against rural customers in less dense population areas not served by UCN for local exchange service. In addition, Public Counsel believes it is discriminatory to low volume users because the company is proposing to apply a flat fee to recover a usage sensitive cost. In response to these discrimination concerns, Staff notes that UCN's tariff does not presently offer basic local telecommunications service. Thus, UCN's practical application of exempting the application of the charge based on subscribing to UCN's local service may be moot. Nevertheless, UCN's proposed charge In-State Connection Fee might be considered similar to the instate access recovery fees



currently levied by such interexchange carriers as AT&T, MCI, and Sprint. In those proceedings the companies exempted the application of the fee if the customer subscribes to the company's basic local telecommunications service. Such an exemption was not found to be unreasonably discriminatory.

In summary, Staff modifies its initial recommendation. Staff recommends the Commission further suspend or ultimately reject UCN's proposed tariff filing. Staff believes the proposed filing violates Commission rules 4 CSR 240-33.045 (1) and (2). UCN has failed to adequately demonstrate that consumers will be provided with a clear, full and meaningful disclosure of all charges that the customer has ordered or is considering ordering. In addition, the proposed charges may be inappropriately viewed as governmentally mandated charges due to how the charges appear on the consumer's bill as well as how the fees are described to the consumer.

Finally, Staff desires to simply comment on UCN's proposal to establish an In-State Connection Fee. The company describes the charge in order to recover the company's cost of local exchange company access charges. Technically, UCN is a reseller and is not directly charged access charges by local telephone companies. Instead UCN uses the services and facilities of underlying wholesale providers. The underlying wholesale providers are billed access charges by local telephone companies. Nevertheless UCN officials state the company pays access charges indirectly. Therefore, UCN differs from other companies who have established an instate access recovery charge or similar charge because UCN does not directly billed access charges by local telephone companies. In this respect the company's description of the charge may be not be totally accurate; however UCN's description does not violate any Commission rule.

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

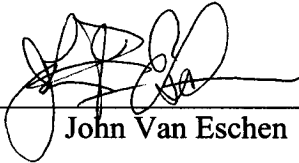
In the matter of the tariff of UCN, Inc.       )  
to establish an Instate Connection Fee       )  
and an Instate Cost Recovery Charge       )

**Case No. XT-2006-0371**  
**Tariff No. JX-2006-0675**

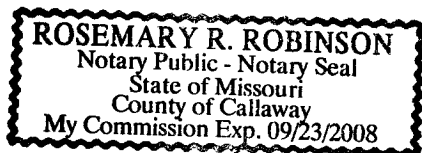
**AFFIDAVIT OF John Van Eschen**

STATE OF MISSOURI       )  
                                      ) ss:  
COUNTY OF COLE       )

John Van Eschen, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying memorandum and that the facts therein are true and correct to the best of his knowledge and belief.

  
\_\_\_\_\_  
John Van Eschen

Subscribed and affirmed before me this 11<sup>th</sup> day of April 2006  
I am commissioned as a notary public within the County of Cole, State of Missouri  
And my commission expires on 7-23-2008



  
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NOTARY PUBLIC