



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

REC'D - FPSC  
MAR - 7 AM 11:23  
COMMISSION CLERK

DATE: MARCH 7, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK  
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS) DBB  
DIVISION OF ECONOMIC REGULATION (DRAPER, VENDETTI) JPM  
OFFICE OF THE GENERAL COUNSEL (J. ELLIOTT) JAE RIZ

RE: DOCKET NO. 020049-TI - INVESTIGATION AND DETERMINATION OF  
APPROPRIATE METHOD FOR REFUNDING OVERCHARGES, AND  
INTEREST, ASSESSED ON INTRASTATE CALLS MADE USING PREPAID  
CALLING SERVICES BY ULTIMATE COMMUNICATIONS, INC.

AGENDA: 03/19/02 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020049.RCM

CASE BACKGROUND

- August 3, 1999 - Ultimate Communications, Inc. (Ultimate Communications) obtained Certificate No. 7036 which authorizes the company to operate as an interexchange company in Florida.
- October 15, 2001 - Staff investigated two prepaid phone cards branded as *The Nickel Card* and *Universal Prepaid Phonecard*, and determined that Ultimate Communications is the prepaid calling services provider for both phone cards.
- November 8, 2001 - Staff mailed Ultimate Communications a certified letter informing the company of apparent rule violations and overcharges. Staff requested a written response by December 3, 2001. At the company's request, staff extended the due date to December 20, 2001.

DOCUMENT NUMBER-DATE

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- December 20, 2001 - Ultimate Communications submitted its response to staff's letter which included the company's proposed method to refund apparent overcharges (Attachment A). Staff subsequently requested that the company clarify the time periods in which the overcharges occurred.
- January 10, 2002 - Staff received Ultimate Communications' clarifications to its refund proposal (Attachment B).
- January 15, 2002 - Staff opened this docket to address Ultimate Communications' proposed method to refund overcharges.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.08 and 364.19, Florida Statutes. Staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept Ultimate Communications, Inc.'s proposal to submit a lump sum payment of \$1,886.30, plus interest of \$56.55, for a total of \$1,942.85, to the General Revenue Fund for overcharging end-users on intrastate calls made using prepaid calling services provided through the *Universal Prepaid Phonocard* from October 1, 2000, to December 1, 2001?

**RECOMMENDATION:** Yes. The Commission should accept Ultimate Communications, Inc.'s offer to submit a lump sum payment of \$1,886.30, plus interest of \$56.55, for a total of \$1,942.85, to the General Revenue Fund for overcharging end-users on intrastate calls made using prepaid calling services provided through the *Universal Prepaid Phonocard* from October 1, 2000, through December 1, 2001. The payment should be received by the Commission within fourteen calendar days after the issuance of the Consummating Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the General Revenue Fund. If Ultimate Communications, Inc. fails to pay in accordance with its offer, Certificate No. 7036 should be canceled administratively. If Ultimate Communications Inc.'s certificate is canceled in accordance with the Commission's Order, Ultimate Communications, Inc. should be required to immediately cease and desist providing interexchange telecommunications services in Florida. **(Buys, Elliott)**

**STAFF ANALYSIS:** Rule 25-24.920(6), Florida Administrative Code, Standards for Prepaid Calling Card Services and Consumer Disclosure, states:

A company shall not reduce the value of a card by more than the charges printed on the card, packaging, or visible display at the point of sale.

Rule 25-24.920(9), Florida Administrative Code, Standards for Prepaid Calling Card Services and Consumer Disclosure, states:

Conversation time of less than a full minute shall not be rounded up beyond the next full minute.

Based on staff's evaluation, the value of the *Universal Prepaid Phonocard* was charged down by more than the charges printed

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on the card or visible display in apparent violation of Rule 25-24.920(6), Florida Administrative Code, and intrastate calls were rounded up beyond the next full minute in apparent violation of Rule 25-24.920(9), Florida Administrative Code. *The Nickel Card* was billed in one-minute increments and the value of the card was reduced according to the charges printed on the card. Thus, no overcharges were evident for *The Nickel Card*.

Ultimate Communications investigated the apparent overcharges and submitted its response in which the company indicated it overcharged end-users of the *Universal Prepaid Phonecard* by the following amounts:

- Overcharging the maintenance fee by \$0.06 for each call made. The amount actually charged was \$0.55, but the amount disclosed at the point of sale was \$0.49.
- \$0.019 for each minute that was overcharged due to rounding up the last minute of the call to the next highest third minute.

Ultimate Communications reported that 62,344 minutes of extra time was deducted from intrastate calls made from October 1, 2000, to December 1, 2001. In addition, the company reported that 11,696 intrastate calls made from February 1, 2001, to December 1, 2001, were affected by the higher weekly maintenance fee. The refund of \$1,886.30 proposed by Ultimate Communications is based on the following:

1. Weekly maintenance fees overcharged by \$701.76.
2. Three-minute rounding caused overcharges of \$1,184.54.

Staff then used the amount of \$1,886.30 as the basis for calculating interest of \$56.55.

To resolve the overcharges caused by the apparent violations of Rule Nos. 25-24.920(6), and 25-24.920(9), Florida Administrative Code, Ultimate Communications proposes to make a lump sum payment to the General Revenue Fund. Ultimate Communications indicated that it understands that the preferred method would be to refund the overcharges to the individual customers, but due to the nature of this prepaid calling card product, it is not feasible to refund

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the overcharges to the affected customers. A record of the customers does not exist. Staff concurs with the company and believes the best alternative to refunding the overcharges to the customers is that proposed by Ultimate Communications, which is to contribute the amount of the overcharges to the General Revenue Fund. This method is consistent with previous refund resolution proposals accepted by the Commission for overcharges on prepaid calling cards.

In addition, Ultimate Communications has revised the printing on the *Universal Prepaid Phonecard* and *The Nickel Card* so that they comply with all applicable rules. Ultimate Communications has also submitted a revision to its tariff to include the correct surcharges and corrected the call timing so that intrastate calls are now rounded to the nearest minute instead of the nearest three minutes. It appears that Ultimate Communications has taken the necessary actions to remedy the problems that caused the apparent rule violations and subsequent overcharges.

Based on the aforementioned, staff recommends that the Commission should accept Ultimate Communications, Inc.'s offer to submit a lump sum payment of \$1,886.30, plus interest of \$56.55, for a total of \$1,942.85, to the General Revenue Fund for overcharging end-users on intrastate calls made using prepaid calling services provided through the *Universal Prepaid Phonecard* from October 1, 2000, through December 1, 2001. The payment should be received by the Commission within fourteen calendar days after the issuance of the Consummating Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the General Revenue Fund. If Ultimate Communications, Inc. fails to pay in accordance with its offer, Certificate No. 7036 should be canceled administratively. If Ultimate Communications Inc.'s certificate is canceled in accordance with the Commission's Order, Ultimate Communications, Inc. should be required to immediately cease and desist providing Interexchange telecommunications services in Florida.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should remain open pending the receipt of the \$1,942.85 payment. Upon receipt of the payment, it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund, and this docket should be closed administratively. If the company fails to make the payment, this docket should be closed administratively upon cancellation of Ultimate Communications, Inc.'s certificate and the issuance of the Commission's Order to cease and desist providing interexchange telecommunications services in Florida. **(Elliott)**

**STAFF ANALYSIS:** The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. This docket should remain open pending the receipt of the \$1,942.85 payment. Upon receipt of the payment, it should be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund, and this docket should be closed administratively. If the company fails to make the payment, this docket should be closed administratively upon cancellation of Ultimate Communications, Inc.'s certificate and the issuance of the Commission's Order to cease and desist providing interexchange telecommunications services in Florida.

**LAW OFFICES OF THOMAS K. CROWE, P.C.**

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2001 DEC 20 AM 10:22  
DIVISION OF  
COMPETITIVE SERVICES

December 19, 2001

**BY FEDEX (850-413-6536)**

Dale R. Buys  
Regulatory Analyst  
Bureau of Service Quality  
Florida Public Service Commission  
Capitol Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Ultimate Communications, Inc.

Dear Mr. Buys:

The following replies to your letter of inquiry dated November 8, 2001 regarding the prepaid calling services of Ultimate Communications, Inc. ("UCI"). UCI has carefully reviewed the concerns expressed in your letter and has taken specific actions, described herein, to address these concerns. Please note that the original deadlines for responding set forth in your letter were extended to December 20, 2001.

The following responds to the six points raised on pages four and five of your letter with respect to which you requested that UCI take specific action.

1. *Please identify all circumstances in which an overcharge may have occurred for all intrastate prepaid calling services provided by Ultimate Communications through The Nickel Card and the Universal Prepaid Phone Card within Florida.*

RESPONSE: The *Universal Prepaid Phone Card* contained a 3 minute rounding provision, which has since been corrected. According to our client, as many as 62,344 minutes of extra time was deducted from phone cards for Florida intrastate calls as a result of 3 minute rounding.

In addition, the Maintenance Fee, according to UCI, had recently been increased on the *Universal Prepaid Phone Card* from 49¢ to 55¢, which is the reason for the 6¢ discrepancy on the first call. Our client informs us that 11,696 Florida intrastate calls

Dale R. Buys  
December 19, 2001  
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were impacted by this.

With respect to the other discrepancies indicated in your review, the differences your inquiry discovered were as a result of not taking into consideration the charge associated with the phrase "*Additional taxes, fees, and surcharges imposed by government and/or carrier of 6¢ to 25¢ per three minutes of calling time apply to each call.*" For instance, the amount of such "additional taxes, fees, and surcharges" for Florida intrastate calls for the *Nickel Card* has been 8¢ per three minutes, rounded down. Thus, a 183 second call would result in an 8¢ charge. This amount is consistent with your observation. Likewise, the amount of such "additional taxes, fees, and surcharges" for Florida intrastate calls for the *Universal Prepaid Phone Card* has been 11¢ per three minutes. Thus, a 183 second call would result in an 11¢ charge.

UCI regrets these discrepancies and, with the separate tariff revision being filed today, seeks to ensure that its billing practices are consistent with its tariff and other disclosures.

2. *Please disclose the amount of overcharges identified in action 1.*

RESPONSE: Overcharges identified under the Response above total \$1,886.30. Overcharges with respect to the three minute rounding of the *Universal Prepaid Phone Card* come to a maximum of \$1,184.54 (62,344 minutes multiplied by 1.9¢). Overcharges with respect to the *Universal Prepaid Phone Card* Maintenance Fee come to \$701.76. According to our client, the 55¢ Maintenance Fee was applied to 11,696 intrastate Florida calls (11,696 x 6¢ = \$701.76).

3. *In consideration of Rule 25-4.114, Florida Administrative Code, Refunds, Ultimate Communications should proffer to refund any overcharges to its Florida customers, if possible, or remit the total amount overcharged to the Florida General Revenue Fund.*

RESPONSE: UCI intends to remit the total amount overcharged (i.e., \$1,886.30) to the Florida General Revenue Fund. We will contact you shortly for specific instructions as to how and where to forward our payment.

4. *Please provide me with a written response to the apparent overcharges and proposed refund listed in actions 1, 2, and 3, by November 26, 2001.*

RESPONSE: See above.



Dale R. Buys  
December 19, 2001  
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5. *Please submit a revision updating Ultimate Communications' tariff to the Division of Regulatory Oversight by November 26, 2001. The revision should include the rates and applicable surcharges as disclosed on The Nickel Card and the Universal Prepaid Phone Card. Also, please notify me when the tariff update has been submitted.*

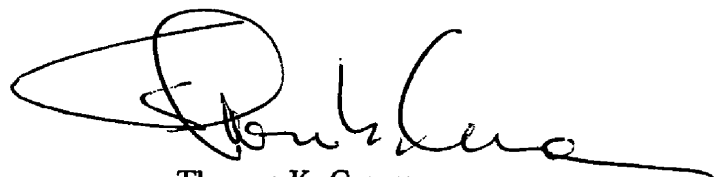
RESPONSE: A tariff revision updating Ultimate Communications' tariff is being filed simultaneously with this letter. A copy of the revised tariff, as filed, is included herewith as Appendix A. The revised tariff includes the rates and applicable surcharges as disclosed on *The Nickel Card* and the *Universal Prepaid Phone Card*.

6. *Please revise the printing on The Nickel Card and the Universal Prepaid Phone Card so that they comply with the Commission's consumer disclosure rules and provide me with a copy of the revised phone cards, and any display material used to market the cards, by December 3, 2001.*

RESPONSE: A copy of the revised phone card disclosure language is included as Appendix B. This language is consistent with the proposed language separately forwarded and discussed with you on December 10, 2001.

We trust that the foregoing responds fully to your letter of inquiry. Should you have any questions or require any additional information, please contact the undersigned.

Sincerely,



Thomas K. Crowe  
Daron T. Threet,  
Counsel for UCI Communications, Inc.

Appendices

cc: Leslie G. Labanca

**LAW OFFICES OF THOMAS K. CROWE, P.C.**  
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January 9, 2002

**BY FEDEX (850-413-6536)**

Dale R. Buys  
Regulatory Analyst  
Bureau of Service Quality  
Florida Public Service Commission  
Capitol Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

2002 JAN 10 AM 10:18  
DIVISION OF  
COMPETITIVE SERVICES

Re: Ultimate Communications, Inc.

Dear Mr. Buys:

On behalf of Ultimate Communications, Inc. ("UCI"), and pursuant to our conference call yesterday, the following supplies the additional information you have requested. This information constitutes a supplement to our letter to you dated December 19, 2001.

First, revised phone card disclosure language for the *Universal Prepaid Phone Card* and *The Nickel Card* is included in the Appendix. This revised language, modified in accordance with our discussion yesterday, supercedes the language supplied under Appendix B in our December 19, 2001 letter for the *Universal Prepaid Phone Card* and *The Nickel Card*.

Second, the following is being supplied in response to your request for more specific information regarding the overcharges so as to allow a calculation of refund interest in accordance with Rule 25-4.114 of the Florida Administrative Code.

With respect to overcharges associated with the three minute rounding, the rounding was in effect from approximately October 1, 2000 to December 1, 2001. UCI is unable to determine a precise time allocation for the overcharges, and proposes that a pro rata allocation be accepted for purposes of interest calculation. Thus, to determine applicable interest, the \$1,184.54 would be allocated over the 14 month period at \$84.61 per month.

With respect to overcharges associated with the weekly Maintenance Fee which was increased from \$0.49 to \$0.55, that increase was in effect from February 1, 2001 to December 1,

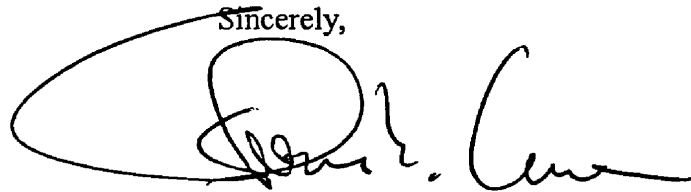
Dale R. Buys  
January 9, 2002  
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2001. UCI is unable to determine a precise time allocation for the overcharges, and proposes that a pro rata allocation be accepted for purposes of interest calculation. Thus, to determine applicable interest, the \$701.76 would be allocated over the 10 month period at \$70.18 per month.

UCI understands that the method preferred by the Commission is to refund individual customers, but the product at issue here does not facilitate a specific, per customer determination of the customer base. In light of this, we would prefer to remit a one time refund representing the total amount overcharged to the Florida General Revenue Fund, as indicated in our December 19, 2001 letter.

We trust that the foregoing responds fully to your letter of inquiry. Should you have any questions or require any additional information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe". The signature is written in a cursive style with a large, sweeping initial "T" and "C".

Thomas K. Crowe  
Daron T. Threet,  
Counsel for Ultimate  
Communications, Inc.

Appendix

cc: Leslie G. Labanca

### **Current Nickel Card**

Do not return your phone card to the store! If for any reason you experience difficulties with your card please call customer service 1-800-515-5213. • Rates, fees, taxes and surcharges are subject to change without notice. • All information is correct on 7/18/00. • Please consult customer service (800-515-5213) or applicable tariff for current rates, taxes, fees, and surcharges. • Maintenance fee of 25¢ per week will apply after first use. • A 29¢ connection fee applies to each call to US destination. • A connection fee of \$1.00 to \$1.50, depending on the destination, applies to each call to an international destination. • Each call to directory assistance is an additional \$1.00. • Each call from a payphone is subject to an additional fee of 50¢. • International cellular calls will be billed at higher rates. • All calls billed in 1 minute increments. • Additional taxes, fees, and surcharges imposed by government and/or carrier of 6¢ to 25¢ per three minutes of calling time apply to each call. • Not responsible for lost, stolen, or misused cards. Unless prohibited by applicable law, no refunds and no returns. Expires 90 days after first use or 9/30/01, whichever occurs first.

### **Revised Nickel Card** **(Changes are shown in italics type)**

Do not return your phone card to the store! If for any reason you experience difficulties with your card please call customer service 1-800-515-5213. • Rates, fees, taxes, and surcharges are subject to change without notice, *except where prohibited by applicable law*. • All information is correct on \_\_\_\_\_ 200\_. • Please consult customer service (800-515-5213) or applicable tariff for current rates, taxes, fees, and surcharges. • Maintenance fee of 25¢ per week will apply after first use. • A 29¢ connection fee applies to each call to US destination. • A connection fee of \$1.00 to \$1.50, depending on the destination, applies to each call to an international destination. • Each call to directory assistance is an additional \$1.00. • Each call from a payphone is subject to an additional fee of 50¢. • International cellular calls will be billed at higher rates. • All calls billed in 1 minute increments. • Additional taxes, fees, and surcharges imposed by government and/or carrier of 6¢ to 25¢ per three minutes of calling time apply to each call, *except for intrastate calls which are subject to a surcharge of \_\_¢ per three completed minutes*. • Not responsible for lost, stolen, or misused cards. Unless prohibited by applicable law, no refunds and no returns. Expires 90 days after first use or \_\_\_/\_\_\_/0\_, whichever occurs first.

**Current Universal 1.9¢**

Do not return your phone card to the store. If for any reason you experience difficulties with your card please call customer service 1-800-515-5213. Rates, fees, taxes and surcharges are subject to change without notice. All information is correct on \_\_\_\_\_ 2000. Please consult customer service at 1-800-515-5213 or applicable tariff for current rates, taxes, and surcharges. Maintenance fee of 49¢ per week will apply after first use. A 49¢ connection fee applies to each call to US destination. A connection fee of \$1.00-\$2.00 applies to each call to an international destination. Each call to directory assistance is an additional \$1.00. Each call from a payphone is subject to an additional fee of 50¢. International cellular calls will be billed at higher rates. All calls billed in 3 minute increments. Additional taxes, fees, and surcharges imposed by government and/or carrier of 6¢ to 25¢ per three minutes of calling time apply to each call. Not responsible for lost, stolen, or misused cards. Unless prohibited by applicable law, no refunds and no returns. Expires 90 days after first use or 9/30/01, whichever occurs first.

**Revised Universal 1.9¢  
(Changes are shown in italic type)**

Do not return your phone card to the store. If for any reason you experience difficulties with your card please call customer service 1-800-515-5213. Rates, fees, taxes, and surcharges are subject to change without notice, *except where prohibited by applicable law*. All information is correct on \_\_\_\_\_ 200\_. Please consult customer service at 1-800-515-5213 or applicable tariff for current rates, taxes, and surcharges. Maintenance fee of 49¢ per week will apply after first use. A 49¢ connection fee applies to each call to US destination. A connection fee of \$1.00-\$2.00 applies to each call to an international destination. Each call to directory assistance is an additional \$1.00. Each call from a payphone is subject to an additional fee of 50¢. International cellular calls will be billed at higher rates. All calls billed in 3 minute (*except 1 minute for intrastate calls*) increments. Additional taxes, fees, and surcharges imposed by government and/or carrier of 6¢ to 25¢ per three minutes of calling time apply to each call, *except for intrastate calls which are subject to a surcharge of \_\_¢ per three completed minutes*. Not responsible for lost, stolen, or misused cards. Unless prohibited by applicable law, no refunds and no returns. Expires 90 days after first use or  / /0 , whichever occurs first.

We will also require that the face of the card contain a phrase similar to that contained on the face of the Nickel Card, that is to say:

Call Anywhere in the Continental U.S., 1.9¢ minute

Great International Rates!