

EUROPE ACQUISITION INC
Form SC TO-T/A
November 05, 2003

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

SCHEDULE TO

**Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 1)**

UGC Europe, Inc.
(Name of Subject Company (Issuer))

Europe Acquisition, Inc.
(Name of Filing Persons (Offeror))

Common Stock, par value \$0.01 per share
(Title of Class of Securities)

90268P 10 2
(CUSIP Number of Class of Securities)

Michael T. Fries
President
Europe Acquisition, Inc.
4643 South Ulster Street, Suite 1300
Denver, Colorado 80237
(303) 770-4001
(Name, address, and telephone numbers of person authorized
to receive notices and communications on behalf of filing persons)

Copy to:
Garth B. Jensen, Esq.
Holme Roberts & Owen LLP
1700 Lincoln, Suite 4100
Denver, Colorado 80203
(303) 861-7000

CALCULATION OF FILING FEE

Transaction valuation(1)

Amount of filing fee(2)

\$950,122,408

\$76,865

(1)

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The transaction valuation is estimated solely for purposes of calculating the filing fee pursuant to Rule 0-11(d). The calculation assumes the acquisition of each outstanding share of common stock, par value \$0.01 per share (the "UGC Europe Shares") of UGC Europe, Inc. not beneficially owned by UnitedGlobalCom, Inc. ("United") or its subsidiaries for 9.0 shares of Class A common stock of United, par value \$0.01 per share (the "United Shares"). The value of the United Shares was calculated as the product of (i) \$6.35 (the average of the high and low prices per share of the United Shares on October 3, 2003 as reported by the Nasdaq National Market) and (ii) 149,625,576 (the maximum number of United Shares expected to be issued in connection with this transaction).

(2)

The amount of the filing fee, calculated in accordance with Rule 0-11, equals \$80.90 per million of the aggregate value of the United Shares offered by the bidder.

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Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:

\$76,865

Form or Registration No.:

Form S-4 (\$71,284) and
Schedule TO (\$5,581)

Filing Party:

UnitedGlobalCom, Inc. and
Europe Acquisition, Inc.

Date Filed:

October 6, 2003

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

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third-party tender offer subject to Rule 14d-1.

o

issuer tender offer subject to Rule 13e-4.

o

going-private transaction subject to Rule 13e-3.

o

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: o

This Amendment No. 1 (the "Amendment") amends and supplements the Tender Offer Statement on Schedule TO (the "Schedule TO"), filed initially with the Securities and Exchange Commission on October 6, 2003, by Europe Acquisition, Inc. ("Purchaser"), a Delaware corporation and a wholly-owned indirect subsidiary of UnitedGlobalCom, Inc., a Delaware corporation ("United"), relating to the offer (the

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"Exchange Offer") to exchange each outstanding share of common stock, \$0.01 par value per share (the "UGC Europe Shares"), of UGC Europe, Inc., a Delaware corporation ("UGC Europe"), not owned by United or its subsidiaries for 9.0 shares of Class A common stock, par value \$0.01 per share (the "United Shares") of United, subject to certain terms and conditions.

On November 4, 2003, United issued a press release announcing the extension of the expiration date of the offer from 5:00 p.m., New York time, on Tuesday, November 4, 2003, to 5:00 p.m., New York time, on Friday, November 7, 2003. A copy of the press release is incorporated by reference into this Amendment as Exhibit (a)(7).

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Item 11. Additional Information.

Item 11(a)(5) is hereby deleted and replaced in its entirety by the following:

"(a)(5) **Legal Proceedings.** On or about October 8, 2003, a purported stockholder filed a complaint in the Delaware Court of Chancery purporting to commence a class action lawsuit on behalf of the public holders of UGC Europe's Class A common stock against us, certain of our affiliates and certain of our officers and directors. On October 21, 2003, the plaintiff filed an amended complaint in the Delaware Court of Chancery. In general, the complaint alleges that the defendants breached their fiduciary duties in connection with the exchange offer by making incomplete and misleading disclosures to the UGC Europe stockholders, and that the exchange offer is at an unfair price. Among the remedies demanded, the complaint seeks to enjoin the exchange offer and obtain declaratory relief, unspecified damages and rescission."

Item 12. Exhibits.

The following are attached as exhibits to this Schedule TO:

| Exhibit Number | Exhibit Description |
|-------------------|---|
| (a)(7) | Press release issued by United on November 4, 2003 (incorporated by reference from United's current report on Form 8-K dated November 4, 2003). |

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SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 1 to Schedule TO is true, complete and correct.

EUROPE ACQUISITION, INC.

By: /s/ FREDERICK G. WESTERMAN III

Name: Frederick G. Westerman III
Title: *Vice President and Treasurer*

Date: November 4, 2003

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