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BEFORE THE ARIZONA CORPORATION COMMISSION

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2014 SEP 11 P 4: 26

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 11 2014

DOCKETED BY

ORIGINAL

PAC-WEST TELECOMM, INC.

Complainant,

v.

QWEST CORPORATION,

Respondent.

DOCKET NOS. T-01051B-05-0495
T-03693A-05-0495

QWEST CORPORATION d/b/a
CENTURYLINK QC STATUS
REPORT AND PROCEDURAL
RECOMMENDATION

Qwest Corporation d/b/a CenturyLink QC ("Qwest") files this status report and procedural recommendation in accordance with the August 4, 2014 Procedural Order issued by the Arizona Corporation Commission (the "Commission").

As the Commission is aware, on March 28, 2013, Pac-West Telecomm, Inc. ("Pac-West"), the Complainant herein, filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas (the "Bankruptcy Court").

In that bankruptcy case, Pac-West and certain of its affiliates sought Bankruptcy Court approval to sell substantially all of their assets to TCNI Operating Company, LLC ("TCNI"), including, but not limited to, certain executory contracts among Pac-West and Qwest and certain of their affiliates. Qwest and its affiliates objected to the sale and the assignment of such contracts.

1 Ultimately, Qwest's and its affiliates' objections were resolved by an agreement between Pac-
2 West and Qwest and certain of their respective affiliates. That agreement was memorialized in a certain
3 agreed order of the Bankruptcy Court dated August 5, 2013 (the "Agreed Order"), a copy of which is
4 attached hereto as Exhibit A.

5 The Agreed Order provided, among other things, for the assignment of the interconnection
6 agreement in the State of Arizona between Pac-West and Qwest (and certain other agreements in other
7 states between Pac-West and Qwest and/or certain of their affiliates) to TNCI and for Pac-West's release
8 of "any and all claims, counterclaims, demands, costs, damages, losses, liabilities, pre-petition deposits,
9 attorneys' fees, actions and causes of action whatsoever, whether known or unknown, liquidated, fixed,
10 contingent, material, immaterial, disputed, undisputed, legal or equitable, which any of the Debtors (or
11 their estates) had, have or may have against the CenturyLink Releasees [defined to include, among
12 others, Qwest] or any of them as of the Initial Closing Date, including, but not limited to, all claims and
13 causes of action (i) under chapter 5 of the Bankruptcy Code or (ii) relating to or in connection with any
14 services, credits or billing disputes." See Agreed order at Para. 2. The Initial Closing Date occurred on
15 September 25, 2013. See First Amended Disclosure Statement at p. 9. Accordingly, the issues raised by
16 the parties before the Arizona Corporation Commission in this Complaint Docket No. T-01051B-05-
17 0495 ("Docket 05-0495") were released.

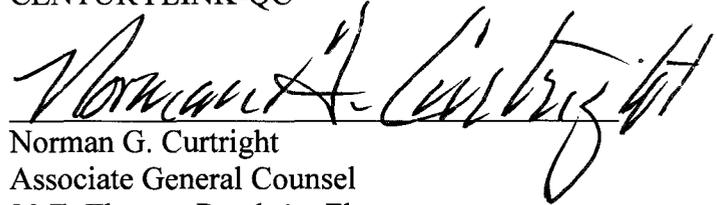
18 On August 1, 2013, TCNI applied for Commission approval of the transfer of Pac-West's assets
19 and customer base to TCNI. The Commission approved the transfer. Decision No. 74153, *In the Matter*
20 *of the Joint Application of TNCI Operating Company LLC and Pac-West Telecomm, Inc. (Debtor-In-*
21 *Possession) for Approval of the Transfer of Customer Base and Assets*, Docket Nos. T-20882A-13-0262,
22 T-03693A-13-0262 (October 25, 2013).

23 On March 27, 2014, the Bankruptcy Court entered an order confirming Pac-West's and its
24 debtor-affiliates' Chapter 11 plan (the "Plan"). The Plan became effective on July 1, 2014.

1 Pursuant to the Plan, Pac-West transferred its remaining assets to a liquidating trust for
2 liquidation and ceased to operate. The Corporation Commission's records indicate that Pac-West has
3 not maintained good corporate standing. Its foreign corporation registration for authority to transact
4 business in Arizona has been revoked. Thus, for all intents and purposes, Pac-West no longer exists,
5 which explains the lack of compliance to the Commission's prior procedural order requiring Pac-West to
6 file status reports in this docket.¹ Based on these circumstances, and the fact that the issues raised by the
7 parties in Docket 05-0495 have been settled pursuant to the Agreed Order, the claims and counterclaims
8 in Docket 05-0495 should be dismissed and the docket closed.

9 RESPECTFULLY SUBMITTED, this 11th day of September, 2014.

10 QWEST CORPORATION d/b/a
11 CENTURYLINK-QC

12 

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24 ¹ As the Commission is aware, Pac-West's Arizona regulatory counsel have withdrawn. Qwest serves
25 this Status Report on Pac-West's counsel in the bankruptcy matter, who is named on the attached service
list.

1 ORIGINAL and thirteen (13) copies filed
this 11th day of September, 2014, with:

2 Docket Control
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
Phoenix, Arizona 85007

5 COPIES of the foregoing hand-delivered
this same day to:

6 Janice Alward
7 Legal Division
8 Arizona Corporation Commission
9 1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
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10 COPIES of the foregoing mailed this
11 11th day of September, 2014 to:

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EXHIBIT A



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: August 05, 2013.

**TONY M. DAVIS
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
UPH HOLDINGS, INC.	§	CASE NO. 13-10570
PAC-WEST TELECOMM, INC.	§	CASE NO. 13-10571
TEX-LINK COMMUNICATIONS, INC.	§	CASE NO. 13-10572
UNIPOINT HOLDINGS, INC.	§	CASE NO. 13-10573
UNIPOINT ENHANCED SERVICES, INC.	§	CASE NO. 13-10574
UNIPOINT SERVICES, INC.	§	CASE NO. 13-10575
NWIRE, LLC	§	CASE NO. 13-10576
PEERING PARTNERS COMMUNICATIONS, LLC	§	CASE NO. 13-10577
DEBTORS.	§	CHAPTER 11
	§	
EIN: 45-1144038; 68-0383568; 74-2729541; 20-3399903; 74-3023729; 38-3659257; 37-1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, #200 AUSTIN, TEXAS 78730	§	JOINTLY ADMINISTERED UNDER CASE NO. 13-10570

AGREED ORDER REGARDING THE ASSUMPTION AND ASSIGNMENT OF VARIOUS EXECUTORY CONTRACTS AMONG ONE OR MORE OF THE ABOVE-CAPTIONED DEBTORS AND THE CENTURYLINK ENTITIES

CAME ON FOR CONSIDERATION, the Motion for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II) Authorizing (A) the Sale of Substantially All of the Debtors' Assets, (B) the Payment of the Net Proceeds of Sale to Hercules Technology II, L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (Dckt. No. 255) (the "Sale Motion") of the Debtors (as defined below), pursuant to sections 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014, for entry of an order authorizing and approving, among other things, the sale of certain of the Debtors' assets free and clear of all liens, claims and interests or other encumbrances and related relief, including the assumption and assignment of certain executory contracts between certain of the Debtors and Qwest Corporation d/b/a CenturyLink QC ("QC"), Qwest Communications Company, LLC d/b/a CenturyLink QCC ("QCC"), Central Telephone Company - Nevada d/b/a CenturyLink ("Central"), and CenturyTel of Washington, Inc. d/b/a CenturyLink ("Washington"), and together with QC, QCC, and Central, the "CenturyLink Entities"; and the Court having entered an order generally approving the Sale Motion but reserving certain of the CenturyLink Entities' objections to the Sale Motion and related Cure Notice (as defined below), with the consent of the Debtors and the CenturyLink Entities and good and sufficient cause appearing therefor,

THE DEBTORS AND THE CENTURYLINK ENTITIES AND THE BUYER (AS DEFINED BELOW) STIPULATE, AND THE COURT HEREBY FINDS THAT:¹

A. On March 28, 2013 (the "Petition Date"), each of Pac-West Telecomm, Inc. ("Pac-West"), UPH Holdings, Inc. ("UPH"), Tex-Link Communications, Inc. ("Tex-Link"),

¹ As appropriate, findings of fact will be construed as conclusions of law, and conclusions of law will be construed as findings of fact. *See* Fed. R. Banker. P. 7052.

UniPoint Holdings, Inc. ("UniPoint"), UniPoint Enhanced Services, Inc. ("Enhanced"), UniPoint Services, Inc. ("Services"), nWire LLC ("nWire") and Peering Partners Communications, LLC ("Peering" and together with Pac-West, UPH, Tex-Link, UniPoint, Enhanced, Services and nWire, the "Debtors") filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Texas, Austin Division thereby commencing bankruptcy cases jointly administered under Case No. 13-10570.

B. The Debtors and the CenturyLink Entities are parties to various executory contracts (collectively, and including any and all amendments, annexes, exhibits, addenda, schedules, attachments, contract orders and rate change notifications thereto, the "Contracts"), including but not limited to, the following:

- Pac-West and QC are parties to (a) that certain Interconnection Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services, Between Qwest Corporation and Pac-West Telecomm, Inc., for the State of Arizona, effective September 21, 2010 (as amended); (b) that certain Interconnection Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services, Between Qwest Corporation and Level 3 Communications, LLC, for the State of Colorado, effective June 24, 2007 (as adopted by Pac-West effective August 21, 2008) (as amended); (c) that certain Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services provided by Qwest Corporation in the State of Idaho (Third Revision) [to Talk America, Inc.] dated July 25, 2002 (as adopted by Pac-West effective November 23, 2005) (as amended); (d) that certain Interconnection Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services, Between Qwest Corporation and WTI, LLC, for the State of Oregon, effective May 15, 2007 (as adopted by Pac-West effective July 9, 2008) (as amended); (e) that certain Interconnection Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services, Between Qwest Corporation and LSSi Corp., for the State of Utah, effective October 31, 2005 (as adopted by Pac-West effective August 21, 2008) (as amended); (f) that certain Interconnection Agreement for Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services, Between Qwest Corporation and Pac-West Telecomm, Inc., for the State of

Washington, effective December 3, 2009 (as amended); (g) that certain Qwest Local Services Platform Agreement effective December 22, 2010; and (h) those certain tariffs filed by QC with the Federal Communications Commission (the "FCC") and/or certain state regulatory bodies, pursuant to which QC provides telecommunications and related services to Pac-West;

- Pac-West and Central are parties to (a) that certain Master Interconnection, Collocation and Resale Agreement for the State of Nevada dated November 18, 2004 (as amended) (the "Nevada ICA") and (b) those certain tariffs filed by Central with the FCC and/or certain state regulatory bodies, pursuant to which Central provides telecommunications and related services to Pac-West;
- Pac-West and Washington are parties to (a) that certain Interconnection Agreement Between CenturyTel of Washington, Inc. and Level 3 Communications, LLC, for the State of Washington, dated March 6, 2003 (as adopted by Pac-West effective September 25, 2006) (as amended) and (b) those certain tariffs filed by Washington with the FCC and/or certain state regulatory bodies, pursuant to which Washington provides telecommunications and related services to Pac-West;
- Pac-West and QCC are parties to (a) that certain Wholesale Services Agreement effective July 5, 2001 (as amended); (b) that certain IRU Agreement made as of June 30, 2000 (as amended); and (c) those certain tariffs filed by QCC with the FCC and/or certain state regulatory bodies, pursuant to which QCC provides telecommunications and related services to Pac-West;
- Tex-Link and QCC are parties to (a) that certain Wholesale Services Agreement effective January 13, 2003 (as amended); and (b) those certain tariffs filed by QCC with the FCC and/or certain state regulatory bodies, pursuant to which QCC provides telecommunications and related services to Tex-Link; and
- Services and QCC are parties to (a) that certain Wholesale Services Agreement effective September 22, 2003 (as amended); (b) that certain Direct Service Order dated September 30, 2002 (as may be amended); and (c) those certain tariffs filed by QCC with the FCC and/or certain state regulatory bodies, pursuant to which QCC provides telecommunications and related services to Services.

C. The CenturyLink Entities timely filed the following proofs of claim against the Debtors' bankruptcy estates in the aggregate amount of \$20,003,635.80 (such claims and any other claim (as defined in 11 U.S.C. § 101(5)) or charge related to the Debtors arising prior to the Petition Date whether or not asserted in such proofs of claim are collectively the "Pre-Petition Claims"):

<u>Case No.</u>	<u>Debtor</u>	<u>Creditor</u>	<u>Claim #</u>	<u>Amount</u>
13-10571	Pac-West	Central	89	\$7,345,491.80
13-10571	Pac-West	Washington	90	\$ 3,074.49
13-10571	Pac-West	QC	91	\$6,522,787.12
13-10571	Pac-West	QCC	92	\$ 264,268.10
13-10572	Tex-Link	QCC	17	\$ 28,974.37
13-10573	Unipoint	QC	47	\$1,945,347.64
13-10574	Enhanced	QC	17	\$1,945,347.64
13-10575	Services	QCC	11	\$ 2,997.00
13-10575	Services	QC	12	\$1,945,347.64

D. On June 20, 2013, the Debtors filed the Sale Motion. Pursuant to the Sale Motion, the Debtors propose to sell substantially all of the Debtors' assets (the "Sale") to TNCI Operating Company, LLC (the "Buyer") pursuant to the Asset Purchase Agreement dated as of July 3, 2013, by and between the Debtors, as sellers, and the Buyer, as purchaser (the "APA") (Dckt. No. 297).

E. On July 3, 2013, the Debtors filed their Notice of Cure Amounts and Deadline for Objection to Cure Amounts (the "Cure Notice") (Dckt. No. 293).

F. On July 15, 2013, the CenturyLink Entities filed their Objections to the Sale Motion and the Cure Notice (the "CenturyLink Entities' Objections") (Dckt. No. 348).

G. The Buyer and the CenturyLink Entities have agreed to certain confidential terms and conditions upon which the Contracts will be assumed and assigned to the Buyer (the "Buyer Agreement"). In addition, the Debtors and the CenturyLink Entities (collectively, the "Parties") have agreed to certain terms for which Court approval is sought as provided in this Order. Subject to the entry of this Order and the execution of the Buyer Agreement, Buyer agrees that the sum of cure amounts contained in the Buyer Agreement as to the CenturyLink Entities and the Buyer agreement with the AT&T Entities (as defined in the Agreed Order Regarding the Assumption and Assignment of Various Executory Contracts Among One or More of The Above-Captioned Debtors and the AT&T Entities) does not exceed the Cure Cap (as defined in the APA).

H. After substantial arms-length negotiations, the Debtors, the Buyer, and the CenturyLink Entities have agreed to resolve the CenturyLink Entities' Objections and other claims and disputes between them on the terms and conditions provided in this Order and the Buyer Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Provided that the Buyer has complied with its obligations under the Buyer Agreement and the Debtors have complied with their obligations under this Order and the Adequate Assurance Stipulation (as defined below), in accordance with Section 2.2(a) of the APA, at the Initial Closing (as defined in Section 5.1(a)(i) of the APA), the Debtors will assume and assign the Contracts to the Buyer pursuant to Section 365 of the Bankruptcy Code; *provided, however,* that no Contract for services in a particular state will be assigned to Buyer until the first Closing Date (as defined in Section 5.1 of the APA) immediately after that state is an Approved State (as defined in Section 5.1(a) of the APA). With respect to each Contract, the date of actual assumption and assignment shall be referred to as the "Contract Assumption/Assignment Date." Within one (1) business day after each Contract Assumption/Assignment Date, the Debtors will provide to the CenturyLink Entities a copy of the document assigning the applicable Contract(s) to the Buyer.

2. Upon the Initial Closing Date (as defined in Section 5.1(a)(i) of the APA) and immediately prior to the transfer of any Assets (as defined in Section 1.1 of the APA) to the Buyer, except for the obligations of the Parties set forth in this Order, the Debtors will be deemed to have released, acquitted and forever discharged each of the CenturyLink Entities and their respective affiliates, predecessors, successors and assigns (collectively, the "CenturyLink Releasees"), from any and all claims, counterclaims, demands, costs, damages, losses, liabilities, pre-petition

deposits, attorneys' fees, actions and causes of action whatsoever, whether known or unknown, liquidated, fixed, contingent, material, immaterial, disputed, undisputed, legal or equitable, which any of the Debtors (or their estates) had, have or may have against the CenturyLink Releasees or any of them as of the Initial Closing Date, including, but not limited to, all claims and causes of action (i) under chapter 5 of the Bankruptcy Code or (ii) relating to or in connection with any services, credits or billing disputes.

3. Upon the Initial Closing Date and the Buyer's payment in full to the CenturyLink Entities of the cure payment as provided in the Buyer Agreement, except for the obligations of the Parties set forth in this Order, the CenturyLink Entities will be deemed to have released, acquitted and forever discharged each of the Debtors and their respective bankruptcy estates, affiliates, predecessors, successors and assigns from (a) the Pre-Petition Claims, (b) all unpaid net charges (whether or not billed) arising under those certain "ICC VoIP Amendments" to the QC interconnection agreements based on the Debtors' percent of VoIP usage ("PVU") relating to services provided by the CenturyLink Entities to the Debtors prior to July 1, 2013, (c) certain unpaid post-petition billings related to the Nevada ICA that have been disputed by the Debtors (consistent with the Debtors' historical disputes) through the Initial Closing Date and (d) certain other unpaid post-petition billings that also have been disputed by the Debtors (consistent with the Debtors' historical disputes).²

4. The Debtors will not invoice any of the CenturyLink Entities for, or require any of the CenturyLink Entities to pay, any charges relating to virtual NXX traffic ("VNXX traffic") under any interconnection agreement or other arrangements, whether through tariff or otherwise.

² For the avoidance of doubt, the disputed charges referred to in sections 3(b) and 3(d) above are limited to the amount of charges set forth in the spreadsheet attached to this Order as "Exhibit A."

5. With respect to each Contract, pending the Contract Assumption/Assignment Date, the Debtors will comply with their obligations under that certain Stipulation and Order by and Among Qwest Corporation; Qwest Communications Company, LLC; Central Telephone Company – Nevada; CenturyTel of Washington, Inc.; and the Debtors, as Debtors and Debtors in Possession, Concerning Adequate Assurance of Payment for Post-Petition Services Pursuant to Section 366 of the Bankruptcy Code entered by this Court on July 16, 2013 (Dckt. No. 363) (the “Adequate Assurance Stipulation”).

6. The Debtors will make all undisputed payments to the CenturyLink Entities for post-petition services when due and without offset. The CenturyLink Entities will make all undisputed payments to the Debtors for post-petition services when due and without offset.

7. The Parties will work diligently to resolve (i) the Debtors’ purported setoff (on or about July 19, 2013) of alleged post-petition amounts due from the CenturyLink Entities against certain post-petition amounts due to the CenturyLink Entities and (ii) any remaining go-forward billing issues arising from services provided between the Parties.

8. To the extent of any inconsistency between (i) the Adequate Assurance Stipulation, any court order other than this Order, any agreement among the Debtors and the Buyer (or its nominee or designee) or any confirmed chapter 11 plan and (ii) this Order or the Buyer Agreement, this Order and the Buyer Agreement will govern. Without limiting the foregoing, paragraphs 46(g) and 47 of the Final Order Granting the Sale Motion (Dckt. No. 446) will not apply to the Contracts, the services or facilities that the CenturyLink Entities provide to the Debtors under the Contracts or any related accounts, or the terms of the assumption and assignment of the Contracts to the Buyer.

9. This Order and the Buyer Agreement will constitute the entire agreement among the Debtors, the Buyer and the CenturyLink Entities regarding the assumption and assignment of the Contracts and will supersede all prior or contemporaneous agreements regarding such assumption and assignment.

10. If the Initial Closing Date does not occur, all of the Parties' rights, remedies, claims and defenses, including but not limited to, the CenturyLink Entities' Objections, are preserved.

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APPROVED AS TO FORM AND CONTENT:

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