

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Joint
Application of TNCI Operating
Company LLC and PacWest Telecomm,
Inc. (Debtor-in-Possession) for
Approval of the Transfer of
Customer Base and Certain Assets

Dockets No. 13-2305-01
and 13-2431-02

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HEARING AND PROCEDURAL ORDER  
ADMINISTRATIVE LAW JUDGE REIF  
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TAKEN AT: Heber M. Wells
160 East 300 South
Salt Lake City, UT

DATE: September 12, 2013

TIME: 9:00 a.m.

REPORTED BY: Kellie Peterson, RPR

APPEARANCES

FOR THE DIVISION:

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ALSO APPEARING:

Jeff Compton (telephonically)

Sam Shiftman (telephonically)

Ron Slusher

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Hearing and Procedural Order

September 12, 2013

PROCEEDINGS

ADMINISTRATIVE LAW JUDGE REIF: Good morning, everyone. Thank you for being here. My name is Melanie Reif. I am the administrative law judge for the Utah Public Service Commission. This morning is the date and time for the hearing in Docket 13-2431-02 and 13-2305-01. This matter is entitled, "In the matter of the joint application of TNCl Operating Company, LLC, and PAC-West Telecom, Inc., debtor in possession for approval of the transfer of customer base and certain assets."

This hearing is being held pursuant to Section 54-4-30 of the Utah Code, and let's begin by taking appearances. And, Mr. Evans, if you would kindly identify those individuals who you intend to call as witnesses, and, Mr. Jetter, same with you, too, please.

MR. EVANS: Okay. I am William Evans of Parsons, Bahle and Latimer for the joint applicants TNCl Operating Company, LLC, and PAC-West Telecom, Inc., and our witnesses are on the telephone today are Jeff Compton from TNCl and Sam Shiftman from PAC-West.

ADMINISTRATIVE LAW JUDGE REIF: Thank you.

MR. JETTER: And I am Justin Jetter representing the Utah Division of Public Utilities, and with me today is Ron

1 Slusher, utility technical consultant for the Division of Public
2 Utilities.

3 ADMINISTRATIVE LAW JUDGE REIF: Thank you
4 very much.

5 Mr. Evans, would you like me to swear in your
6 witnesses now or did you want to make a statement beforehand?

7 MR. EVANS: No, that would be fine. Let's swear
8 them in.

9 ADMINISTRATIVE LAW JUDGE REIF: Okay, Mr.
10 Compton and Mr. Shiftman, are you both on the phone?

11 MR. COMPTON: Yes.

12 MR. SHIFTMAN: Yes, I am.

13 ADMINISTRATIVE LAW JUDGE REIF: Okay thank
14 you very much if you would -- I am going to swear you both in at
15 the same time and if you would kindly raise your right hand.

16 JEFF COMPTON and SAM SHIFTMAN, called as
17 witnesses and having been duly sworn, were examined and
18 testified as follows:

19 ADMINISTRATIVE LAW JUDGE REIF: Thank you.
20 And just for the record, could you please identify who spoke first
21 and who spoke second?

22 MR. COMPTON: Jeff Compton spoke first.

23 ADMINISTRATIVE LAW JUDGE REIF: Thank you.

24 MR. SHIFTMAN: And Sam Shiftman second.

25 ADMINISTRATIVE LAW JUDGE REIF: Thank you.

1 Mr. Evans?

2 MR. EVANS: Thank you. TNCI and PAC-West filed
3 their application for approval of transfer of customer base and
4 certain assets from PAC-West to TNCI. That was on August 1,
5 2013. The ALJ has issued a notice of application comment
6 period and hearing on August 7th, and on August 19th, the
7 Division filed its memorandum recommending approval of the
8 application.

9 If it pleases Your Honor, we can just go ahead and
10 call the witness and start with the examination?

11 ADMINISTRATIVE LAW JUDGE REIF: Absolutely.
12 Just for the record, the documents that you refer to are part of
13 the docket and the Commission does take administrative notice
14 of that.

15 MR. EVANS: Okay, thank you. Let's call Jeff
16 Compton first, please.

17 EXAMINATION

18 BY-MR. EVANS:

19 Q. Good morning, Mr. Compton.

20 A. Good morning.

21 Q. Can you hear me okay?

22 A. Yes.

23 Q. Okay. For the record, would you please state your
24 name and your business address and your position at TNCI?

25 A. Yes. I am Jeff Compton, CEO and president of

1 TNCI Operating Company, LLC. Our business address is 114
2 East Haley Street, Suite A, Santa Barbara, California, 93101.

3 Q. And are you the same Jeff Compton that has signed
4 the verification attached to the joint application in this matter?

5 A. Yes, I am.

6 Q. And do you have personal knowledge of the matters
7 setout in the application?

8 A. Yes, I do.

9 Q. Are there any changes or corrections that should be
10 made to the joint application at this time?

11 A. There is no changes; although there's been
12 developments at the FCC since we have filed the application.

13 Q. Okay. Attached to the application is a copy of the
14 application that TNCI and PAC-West filed with the FCC seeking
15 Section 214 authority to complete this transaction; is that right?

16 A. Yes.

17 Q. And has the FCC issued a notice that authorization
18 has been granted?

19 A. Not yet. With respect to the Domestic 214
20 application, the FCC's issued a public notice on August 20th,
21 with a streamline pleading cycle, and we expect the
22 authorization to issue by September 20th.

23 With respect to International 214 application, we
24 expect the public notice to be issued in the near future,
25 accepting the application for streamlined processing. In the

1 meantime, we have requested and received special temporary
2 authority to go ahead with the initial closing of the transaction
3 from the FCC.

4 Q. Okay.

5 MR. EVANS: Your Honor, may I approach and
6 hand out this exhibit?

7 ADMINISTRATIVE LAW JUDGE REIF: Yes, you
8 may.

9 BY MR. EVANS:

10 Q. Okay. I have handed out what has been marked
11 TNCI PAC-West Joint Hearing Exhibit 1. Mr. Compton, do you
12 have a copy of that in front of you?

13 A. Yes, I do.

14 Q. Can you tell us what these documents are that are
15 in this exhibit?

16 A. The first is the notice issued by the FCC inviting
17 comments in response to our Domestic 214 application
18 approval. The next document is a letter from TNCI's counsel to
19 the FCC requesting special temporary authority to complete the
20 initial closing. It is stamped granted by the Wireline
21 Competition Bureau of the FCC. And the third document is the
22 first page of the same letter which has been marked granted by
23 the Policy Division of the International Bureau.

24 Q. Okay, thank you. As far as you know, has there
25 been any opposition to the applications filed with the FCC?

1 A. The deadline to file an opposition to Domestic 214
2 application passed on September 3rd without any comments
3 being filed. We have not received and do not expect any
4 opposition to the International 214 application.

5 Q. Okay. Are you required to obtain state approval
6 from state's other than Utah before completing this transaction?

7 A. Yes, we have filed for approval in Arizona,
8 California, Colorado, and Oregon. We have also filed in other
9 states that require only a notice filing.

10 Q. And have you received an approval from any of
11 these states yet?

12 A. Oregon determined that approval was not required
13 for the transaction, the Colorado application was on the
14 Colorado PUC's consent agenda for yesterday's open meeting
15 and the commission voted for approval. We expect a decision
16 from the Colorado PUC early next week. In addition, we expect
17 California approval, in California, on September 22nd.

18 Q. Have you received any notices or correspondence
19 from any state denying your applications for approval in this
20 transaction?

21 A. No, we have not.

22 Q. If you would can you please offer a summary of why
23 you believe this transaction is in the public interest?

24 A. We believe that this application is in the public
25 interest because the acquisition of PAC-West assets and

1 customers is a result of PAC-West's voluntary Chapter 11
2 bankruptcy filing. The bankruptcy court has already approved
3 the asset purchase agreement and the transaction will achieve
4 an orderly transfer of the customers, keeping their services in
5 place and dial tone on so they can continue to conduct business
6 on PAC-West to a financially stable company that will continue
7 to provide the same level of services that they are already
8 getting, without any interruptions.

9 As stated in the application, TNCI has the
10 experience and is well qualified to provide these services, and
11 we believe that the public interest will be served by approval of
12 our application.

13 Q. Thank you, Mr. Compton.

14 MR. EVANS: I have no further questions. He is
15 available for cross.

16 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
17 Mr. Evans. Any questions, Mr. Jetter?

18 MR. JETTER: I have no questions.

19 ADMINISTRATIVE LAW JUDGE REIF: Okay, thank
20 you.

21 Mr. Evans, do you wish to call your second
22 witness?

23 MR. EVANS: Yes, thank you. I will call Mr. Sam
24 Shiftman.

25 EXAMINATION

1 BY-MR.EVANS

2 Q. Mr. Shiftman, are you on the line?

3 A. Yes, I am.

4 Q. And can you hear me okay?

5 A. I can hear you great, thanks.

6 Q. For the record, will you please state your name,
7 business address, and your position at PAC-West?

8 A. Yes. My name is Sam Shiftman, title is executive
9 vice president of PAC-West Operating Company, UPH Holdings.
10 My business address is 6500 River Place Boulevard, Building
11 Two, Suite 200, Austin, Texas.

12 Q. Okay. Have you reviewed the joint application that
13 has been filed in this proceeding?

14 A. Yes, I have.

15 Q. And do you have personal knowledge of the matters
16 setout in the application?

17 A. Yes, I do.

18 Q. I notice that you are not the officer who signed the
19 verification under the application, are you?

20 A. No. The officer that signed it was Michael
21 Hollaway. He is the president and CEO of the UPH Holdings. I
22 reviewed the application prior and post his execution of it.

23 Q. Okay. So for the purposes of your testimony today,
24 are you in a position and do you adopt the statements made in
25 the application as your own?

1 A. Yes.

2 Q. Are there any changes or -- we have already heard
3 an update from Mr. Compton on the status of FCC and state
4 approvals. Are there any other changes or corrections that you
5 think should be made to the joint application?

6 A. No, I do not.

7 Q. Are you aware of any opposition to this proposed
8 transaction or any unfavorable recommendations from federal or
9 state regulators?

10 A. I have not heard any on the federal or state level.

11 Q. Do you have anything to add to Mr. Compton's
12 statement of why this transaction is in the public interest?

13 A. No, I think he covered it fairly well.

14 Q. Okay, thank you, Mr. Shiftman.

15 MR. EVANS: He is available for cross.

16 ADMINISTRATIVE LAW JUDGE REIF: Mr. Jetter?

17 MR. JETTER: I have no questions.

18 ADMINISTRATIVE LAW JUDGE REIF: Thank you.

19 Mr. Shiftman, regarding your statement about the public
20 interest, would you agree that the explanation that Mr. Compton
21 provided is accurate and that this transaction is indeed in the
22 public interest.

23 MR. SHIFTMAN: Yes, I would agree that the
24 transition of the customers from PAC-West to TNCl would be in
25 the interest of the public.

1 ADMINISTRATIVE LAW JUDGE REIF: Okay, thank
2 you. Anything further, Mr. Evans?

3 MR. EVANS: No. If I could just summarize before
4 we close the proceeding, that would be fine.

5 ADMINISTRATIVE LAW JUDGE REIF: Okay.
6 Before we move on, would you like to move to have your exhibit
7 entered?

8 MR. EVANS: Yes, thank you. Move to have TNCI
9 PAC-West Joint Hearing Exhibit 1 admitted to the record.

10 ADMINISTRATIVE LAW JUDGE REIF: Any
11 objection?

12 MR. JETTER: No objection, Your Honor.

13 ADMINISTRATIVE LAW JUDGE REIF: It is so
14 entered and will be made part of the transcript, thank you.
15 Exhibit No. 1 was admitted into evidence.)

16 ADMINISTRATIVE LAW JUDGE REIF: Mr. Jetter?

17 MR. JETTER: Thank you, Your Honor. Division
18 would like to call our witness, Ron Slusher.

19 RON SLUSHER, called as a witness and having
20 been duly sworn, was examined and testified as follows:

21 ADMINISTRATIVE LAW JUDGE REIF: Thank you.

22 EXAMINATION

23 BY-MR.JETTER:

24 Q. Mr. Slusher, would you please state your name and
25 occupation for the record?

1 A. Name is Ron Slusher, S as in Sam, L-U-S-H-E-R,
2 utility technical consultant for the Division of Public Utilities.

3 Q. Thank you. And, Mr. Slusher, have you reviewed
4 the filings made by the joint applicants in the two docket
5 numbers relevant to this hearing today?

6 A. Yes.

7 Q. And have you also had an opportunity to review the
8 exhibit provided by the applicants marked TNCI PAC-West Joint
9 Hearing Exhibit 1?

10 A. Yes.

11 Q. Did you prepare a memorandum filed with the
12 Commission, dated August 19, 2013?

13 A. I did.

14 Q. And do you have any corrections or updates you
15 would like to make to that?

16 A. No corrections, no updates.

17 Q. Thank you. And you also filed an affidavit along
18 with that?

19 A. That is correct.

20 Q. And are there any corrections or updates you would
21 like to make to that?

22 A. No.

23 Q. Thank you.

24 MR. JETTER: And I believe the Administrative Law
25 Judge has taken notice of all of the filings; is that correct?

1 ADMINISTRATIVE LAW JUDGE REIF: That is
2 correct.

3 BY MR. JETTER:

4 Q. Does the memorandum currently reflect the position
5 of the Division of Public Utilities?

6 A. It does.

7 Q. And do you still believe that granting this
8 application would be just reasonable and in the public interest?

9

10 A. Yes, we do.

11 Q. Are you aware of any opposition in any form to
12 this?

13 A. I have not heard or seen any opposition.

14 Q. Thank you.

15 MR. JETTER: I have no further questions.

16 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
17 Mr. Jetter. Mr. Evans, any questions?

18 MR. EVANS: No questions, thank you.

19 ADMINISTRATIVE LAW JUDGE REIF: Thank you
20 for your testimony, Mr. Slusher.

21 MR. SLUSHER: Thank you.

22 ADMINISTRATIVE LAW JUDGE REIF: Before we
23 get back to you, Mr. Evans, I would like to ask if there is anyone
24 here today who wishes to object or make a statement regarding
25 the application that is pending before the Commission? Hearing

1 none, the Commission will assume no objection has been made.

2 And, Mr. Evans, back to you for your statement that
3 you requested.

4 MR. EVANS: Thank you. The Commission's rule
5 746-349-7 requires that if no objection to the proposed
6 transaction is submitted or heard, then the Commission will
7 presume the approval of the transaction is in the public interest
8 and use the information contained in the application as evidence
9 to support a Commission's order of approval.

10 We note there have been no interveners and no
11 opposition to this application, so we would submit that it should
12 be found to be in the public interest and that the application
13 should be granted. Thank you.

14 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
15 Mr. Evans. Anything in conclusion from the Division?

16 MR. JETTER: No, I don't have anything, thank you.

17 ADMINISTRATIVE LAW JUDGE REIF: Thank you,
18 thank you all. The Commission does, in fact, take note of the
19 Administrative Rule and we will expect to issue an order as soon
20 as we receive the transcription, so probably very soon.

21 So the hearing is adjourned and thank you all for
22 coming, and to the gentlemen on the telephone, thank you for
23 joining us and for your testimony today. The Commissioners
24 appreciate it. (The hearing was concluded at 9:15 a.m.)
25

REPORTER'S CERTIFICATE

State of Utah)

)

County of Salt Lake)

I hereby certify that the witness in the foregoing deposition was duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken at the time and place herein named;

That the testimony of said witness was reported by me in stenotype and thereafter transcribed into typewritten form.

I further certify that I am not of kin or otherwise associated with any of the parties of said cause of action and that I am not interested in the even thereof.

IN WITNESS WHEREOF, I set my hand this 24th day of September, 2013.

Kellie Peterson, RPR