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*For Pac-West Telecomm, Inc.*

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**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

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Joint Application of

**TNCI Operating Company LLC and Pac-  
West Telecomm, Inc. (Debtor-in-  
Possession) for Approval of the Transfer of  
Customer Base and Certain Assets**

**JOINT APPLICATION**

**Docket No. \_\_\_\_\_**

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**JOINT APPLICATION**

TNCI Operating Company LLC (“TNCI”) and Pac-West Telecomm, Inc. (Debtor-In-Possession) (“Pac-West”) (together, “Applicants”), by their undersigned representatives and pursuant to *Utah Code Ann.* § 54-4-30 and R746-349-7 of the Rules of the Utah Public Service Commission (“Commission”), respectfully request Commission approval, to the extent

required, for TNCI to acquire the customers (including the customers' contracts) and certain assets,<sup>1</sup> but not the Certificate Public Convenience and Necessity ("CPCN"), of Pac-West through a sale pursuant to Section 363 of the United States Bankruptcy Code (the "Transaction").<sup>2</sup> As a result of the Transaction, Pac-West's customers will be transferred to TNCI, which will become the service provider for those customers. As described below, the Transaction will be virtually transparent to customers of Pac-West in terms of the services that those customers receive and the rates and terms of those services.

Applicants also request a waiver of Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5 to the extent that they may be inconsistent with the FCC's rules regarding the transfer of customer bases provided in 47 C.F.R § 64.1120(e).

In support of this filing, Applicants provide the following information:

## **I. INTRODUCTION**

On March 28, 2013, UPH Holdings, Inc. and its subsidiaries including Pac-West (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., as amended, in the United States Bankruptcy Court for the Western District of Texas, Austin Division (the "Bankruptcy Court"). Throughout the proceeding, Pac-West has continued to operate its business and provide telecommunications services to its customers. After an auction process, the Debtors and TNCI entered into an Asset Purchase Agreement, dated as of July 3, 2013 (the "Agreement"), for TNCI to acquire certain of the

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<sup>1</sup> Applicants note that Pac-West's physical assets located in Utah that are used or useful in the provision of intrastate telecommunications service only include switches, routers and other equipment and do not include copper or fiber transmission facilities.

<sup>2</sup> *In re Pac-West Telecomm, Inc.*, Chapter 11, Case No. 13-10571, U.S. Bankr. Court (W.D. Texas) (Jointly Administered under Case No. 13-10570).

assets of Debtors. The Bankruptcy Court approved the Agreement and Transaction on July 22, 2013. The Agreement and Sale Order provides for an Initial Closing following receipt of approvals from the Federal Communications Commission (“FCC”), and for additional closings at approximately 45-day intervals until the Final Closing, which will occur on or before the 180th day following the Initial Closing. At each closing, Pac-West will assign to TNCI those assets and customers for which applicable state governmental approvals have been obtained. Given the Chapter 11 status of Pac-West, Applicants submit that the public interest would be served by the prompt transition of the business to TNCI as quickly as possible, and therefore urge that the Commission promptly approve the requested transfer to permit the transfer of the Utah customers and assets at the earliest possible time.

## **II. DESCRIPTION OF THE APPLICANTS**

### **A. TNCI Operating Company LLC**

TNCI is a Delaware limited liability company with principal offices located at 114 E. Haley Street, Suite A, Santa Barbara, California 93101. TNCI is a wholly owned subsidiary of TNCI Holdings LLC (“TNCI Holdings”), a Delaware limited liability company that is wholly owned by investment funds managed by Garrison Investment Group (collectively, the “Garrison Group”), a leading middle market investor.

As the Commission is aware, TNCI is in the process of acquiring substantially all of the assets of Trans National Communications International, Inc. (the “TNCII Transaction”). *See* Docket No. 13-2431-01 (the “TNCII Transfer Application”). On July 31, 2013, the Commission issued a Report and Order in Docket No. 13-2431-01 approving the TNCII Transaction and granting TNCI Certificate No. 2431 to provide telecommunications services in

Utah.<sup>3</sup> As a result of the closings of the TNCII Transaction that have occurred to date, TNCI currently provides interstate and international telecommunications throughout the United States and intrastate telecommunications services in 25 states that have already authorized the TNCII Transaction.

TNCI is managed by individuals with significant experience in the telecommunications industry and therefore has the technical, operational and managerial qualifications to acquire the assets and customers of Pac-West. Biographies of the key personnel of TNCI were attached as Exhibit C to the TNCII Transfer Application and are incorporated by reference herein. Further, TNCI has been funded by Garrison Group. Unaudited financial statements of TNCI are provided under seal as Confidential Exhibit A to this Application. As demonstrated by this information, TNCI has the managerial, technical and financial qualifications to provide high quality telecommunications services to the customers of Pac-West.

**B. Pac-West Telecomm, Inc. (Debtor-In-Possession)**

Pac-West is a California corporation and wholly owned subsidiary of UPH, a Delaware corporation. Pac-West and UPH have a principal business address of 6500 River Place Blvd., Building 2, Suite 200, Austin, Texas 78730. Pac-West offers origination and termination services, managed modem services, co-location, and transport primarily on a wholesale basis to other telecommunications carriers (Pac-West also offers retail T-1 service to a limited number of business/enterprise customers in California and Texas).

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<sup>3</sup> On May 1, 2013, TNCI also filed a letter of intent to provide interexchange telecommunications services in Utah. TNCI also holds authority from the FCC to provide interstate and international telecommunications services.

In Utah, Pac-West is authorized to provide local telecommunications services pursuant to authority granted by the Commission in Docket No. 99-2305-01 on May 8, 2000. Pac-West also holds domestic and international Section 214 authorizations from the FCC, which allow Pac-West to offer interstate and international telecommunications services.

### **III. CONTACTS**

Questions or any correspondence, orders, or other materials pertaining to this filing should be directed to the following.

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#### With a copy to:

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**IV. DESCRIPTION OF THE TRANSACTION**

Pursuant to the Agreement, TNCI will acquire certain of the assets of Pac-West, including Pac-West's customer accounts and contracts, telecommunications equipment. The Bankruptcy Court approved the Agreement and the Transaction contemplated thereby on July 22, 2013. The Agreement and Sale Order provides for an Initial Closing following receipt of approvals from the FCC, and for additional closings at approximately 45-day intervals until the Final Closing, which will occur no later than the 180th day following the Initial Closing. Pursuant to the Agreement and Sale Order, at each closing Pac-West will assign to TNCI those customers accounts and contracts and assets for which applicable governmental approvals have been obtained.

In the interest of assuring seamless and uninterrupted service, all of the assigned customers will continue to receive service from TNCI under the same rates, terms and conditions of services as currently provided by Pac-West. Pac-West provides services only to wholesale carrier customers in Utah. Its contracts with those customers will be assigned to TNCI without any changes in their rates, terms or conditions. Future changes in the rates,

terms and conditions of service to the affected customers will be undertaken pursuant to customer contracts and the applicable federal and state notice and tariff requirements.

**V. PUBLIC INTEREST CONSIDERATIONS**

Applicants respectfully submit that the proposed Transaction serves the public interest. The Transaction will result in the assignment of Pac-West customers to a financially stable company that will continue to provide telecommunications services to such assigned customers without interruption. TNCI's operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise. In addition, the proposed Transaction is structured to assure an orderly transition of customers from Pac-West to TNCI. In accordance with the terms of their service contracts and the applicable rules and procedures of the FCC and state(s), including this Commission, customers will be notified of the proposed transaction and the change in their telecommunications provider from Pac-West to TNCI. A sample of the form of notice that will be sent to Pac-West's Utah customers at least 30 days prior to their transfer is provided as Exhibit B.

**VI. INFORMATION REQUIRED BY R746-394-7**

Pursuant to R746-394-7, Applicants provide the following information:

**a. identification that it is not an ILEC,**

Applicants confirm that none of the Applicants or their affiliates is an ILEC in Utah.

**b. identification that it seeks approval of the application pursuant to this rule,**

Applicants confirm that they seek approval of the application pursuant to the informal adjudication process set forth in this rule.

- c. a reasonably detailed description of the transaction for which approval is sought,**

A detailed description of the Transaction is provided in Section IV, above.

- d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and**

A copy of Applicants domestic Section 214 application with the FCC is provided as Exhibit C. Applicants also expect to request approval for the Transaction in the following jurisdictions in addition to Utah: Arizona, California, Colorado, and Oregon. Due to the voluminous nature of these state filings, most of which contain the same basic information, Applicants have only attached as Exhibit D a copy of the Arizona filing (excluding exhibits) requesting approval. Applicants are also providing pre-closing notice to the PUCs in the following states: Idaho, Nevada, Texas and Washington. Due to the voluminous and repetitive nature of the notices to be sent to these PUCs, Applicants have not included copies of the notice filings. Applicants will provide any additional filings at the request of the Commission.

- e. copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the application.**

Applicants have not yet received any orders from any federal agency or state PUC from which Applicants are seeking approval for the Transaction. To the extent requested by the Commission, Applicants will provide any orders or similar actions approving or denying approval of the Transaction.

## **VII. REQUEST FOR WAIVER OF SLAMMING RULES**

As noted above, customers will be notified of the proposed Transaction and the change in their telecommunications provider from Pac-West to TNCIA sample of the form(s) of notice



that will be sent to Pac-West's Utah customers is provided in Exhibit B. Applicants respectfully request, to the extent necessary, that the Commission grant a waiver of Utah Code Ann. § 54-8b-18 and Utah Admin. Code R746-349-5 and any other applicable anti-slamming regulations to the extent that they may be inconsistent with the FCC's rules regarding the transfer of customer bases provided in 47 C.F.R § 64.1120(e).

#### **VIII. REQUEST TO CANCEL THE CERTIFICATES AND TARIFFS OF PAC-WEST**

Following the Transaction, TNCI will hold Pac-West's customer accounts and assume its operations in Utah pursuant to TNCI's CPCN. Therefore, Pac-West requests that, upon notification from the Applicants that the Transaction is complete with regards to Utah customers and assets, the Commission cancel the CPCN and tariffs of Pac-West.

**IX. CONCLUSION**

WHEREFORE, for the reasons set forth above, Applicants request the Commission grant all authority necessary for TNCI Operating Company LLC to acquire the customers and certain of the assets (excluding the CPCN) of Pac-West Telecomm, Inc. (Debtor-In-Possession). Further, Applicants request that the Commission expeditiously act on this Application so that Pac-West's customers can be assigned to TNCI at the earliest possible closing.

Respectfully submitted,

/s/ J. Michael Holloway

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*Counsel for TNCI Operating Company LLC*

Dated: Aug 1, 2013

**LIST OF EXHIBITS**

Exhibit A	Unaudited Financial Statements of TNCI <b>[CONFIDENTIAL -- SUBMITTED UNDER SEAL]</b>
Exhibit B	Sample Customer Notice
Exhibit C	FCC 214 Application
Exhibit D	Arizona Application
Verifications	

