

EXHIBIT D

Arizona Application

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - CHAIRMAN
GARY PIERCE
BRENDA BURNS
SUSAN BITTER SMITH
BOB BURNS

2013 JUL 31 P 4 30

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

T-20882A-13-0262

T-03693A-13-0262

IN THE MATTER OF THE JOINT)
APPLICATION OF TNCI OPERATING)
COMPANY LLC AND PAC-WEST TELECOMM,))
INC. (DEBTOR-IN-POSSESSION) FOR)
APPROVAL OF THE TRANSFER OF)
CUSTOMER BASE AND ASSETS)

DOCKET NOS. T-20882A-13-____
T-03693A-13-____

APPLICATION

JOINT APPLICATION FOR APPROVAL OF THE
TRANSFER OF CUSTOMER BASE AND ASSETS

TNCI Operating Company LLC ("TNCI") and Pac-West Telecomm, Inc. (Debtor-In-Possession) ("Pac-West") (together, "Applicants"), by their undersigned representatives and pursuant to A.R.S. § 40-285(A) and R14-2-1107 of the Arizona Administrative Code, respectfully request approval, to the extent required, from the Commission for TNCI to acquire the customers (including the customers' contracts) and certain assets¹ of Pac-West through a sale pursuant to Section 363 of the United States Bankruptcy Code (the "Transaction").² 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

¹ Applicants note that Pac-West's physical assets located in Arizona that are used or useful in the provision of intrastate telecommunications service include switches, routers, modems and other equipment and do not include copper or fiber transmission facilities. To the extent this transaction occurs after September 13, 2013, the Applicants note that approval is not required for the acquisition of assets pursuant to newly enacted A.R.S. § 40-285(F) as Pac-West's retail telecommunications services are classified as competitive.

² *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).

1 customers of Pac-West in terms of the services that those customers receive and the rates and
2 terms of those services.

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

4 **I. INTRODUCTION AND REQUEST FOR EXPEDITED TREATMENT**

5 On March 28, 2013, UPH Holdings, Inc. (“UPH”) and its subsidiaries including Pac-West
6 (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11,
7 U.S.C. §§ 101 et seq., as amended, in the United States Bankruptcy Court for the Western District
8 of Texas, Austin Division (the “Bankruptcy Court”). Throughout the proceeding, Pac-West has
9 continued to operate its business and provide telecommunications services to its customers. After
10 an auction process, the Debtors and TNCI entered into an Asset Purchase Agreement, dated as of
11 July 3, 2013 (the “Agreement”), for TNCI to acquire certain of the assets of Debtors. The
12 Bankruptcy Court approved the Agreement and Transaction on July 22, 2013. The Agreement and
13 the Court’s Sale Order provides for an Initial Closing following receipt of approvals from the
14 Federal Communications Commission (“FCC”), and for additional closings at approximately 45-
15 day intervals until the Final Closing, which will occur on or before the 180th day following the
16 Initial Closing. At each closing, Pac-West will assign to TNCI those assets and customers for
17 which applicable state governmental approvals have been obtained. Given the Chapter 11 status
18 of Pac-West, Applicants submit that the public interest would be served by the prompt transition
19 of the business to TNCI as quickly as possible, and therefore urge that the Commission promptly
20 approve the requested transfer to permit the transfer of the Arizona customers and assets at the
21 earliest possible time.

22
23
24

1 **II. DESCRIPTION OF THE APPLICANTS**

2 **A. TNCI Operating Company LLC**

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

8 As the Commission is aware, TNCI is in the process of acquiring substantially all of the
9 assets of Trans National Communications International, Inc. (the “TNCII Transaction”). *See*
10 Docket No. T-20882A-13-0114 (“TNCII Transfer Application”). As a result of the closings of the
11 TNCII Transaction that have occurred to date, TNCI currently provides interstate and international
12 telecommunications throughout the United States and intrastate telecommunications services in 25
13 states that have already issued their approvals. In addition to the TNCII Transfer Application,
14 TNCI has filed an Application with the Commission for a certificate of convenience and necessity
15 to provide resold and facilities-based local exchange, long distance, private line and switched
16 access telecommunications services, *see* Docket No. T-20882A-13-0108 (the “Certification
17 Application”), and TNCI urges that the Commission expedite its consideration of the Certificate
18 Application, along with this Application, to enable the Transaction to be completed as soon as
19 possible. TNCI also holds authority from the FCC to provide interstate and international
20 telecommunications services.

21 TNCI is managed by individuals with significant experience in the telecommunications
22 industry and therefore has the technical, operational and managerial qualifications to acquire the
23 assets and customers of Pac-West. Biographies of the key personnel of TNCI were attached as
24 Exhibit E to the Certification Application and are incorporated by reference herein. Further, TNCI

1 has been funded by Garrison Group and *pro forma* financial statements were provided to the
2 Commission's Staff as part of the Certification Application. For all these reasons, TNCI submits
3 that it has the managerial, technical and financial qualifications to provide high quality
4 telecommunications services to the customers of Pac-West.

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

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

12 In Arizona, Pac-West is authorized to provide resold and facilities-based local exchange
13 and interexchange telecommunications services pursuant to Decision No. 61903 issued by the
14 Commission in Docket No. T-03693A-99-0032 on August 27, 1999. Pac-West also holds
15 domestic and international Section 214 authorizations from the FCC, which allow Pac-West to
16 offer interstate and international telecommunications services.

17 **III. DESIGNATED CONTACTS**

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

20 Michael T. Hallam
21 Lewis and Roca LLP
22 40 North Central Avenue
23 Phoenix, AZ 85004-4429
24 602-262-5340 (tel)
602-734-3886 (fax)
mhallam@LRLaw.com

1 For TNCI:

2 Jean L. Kiddoo
3 Brett P. Ferenchak
4 Bingham McCutchen LLP
5 2020 K Street, N.W., Suite 1100
6 Washington, DC 20006-1806
7 202-373-6000 (tel)
8 202-373-6001 (fax)
9 jean.kiddoo@bingham.com
10 brett.ferenchak@bingham.com

With a copy to:

Jeffrey Compton
CEO/President
TNCI Operating Company LLC
114 E. Haley Street, Suite A
Santa Barbara, CA 93101
jcompton@bluecasa.com

7 For Pac-West:

8 Sam Shiffman
9 Executive Vice President
10 UPH Holdings, Inc.
11 6500 River Place Blvd.
12 Building 2, Suite 200
13 Austin, Texas 78730
14 209-444-1443 (tel)
15 512-735-1220 (fax)
16 sshiffman@pointone.com

With a copy to:

Michael Holloway
Chief Executive Officer
UPH Holdings, Inc.
6500 River Place Blvd.
Building 2, Suite 200
Austin, Texas 78730
512-735-1206 (tel)
512-735-1220 (fax)
mholloway@pointone.com

13 **IV. DESCRIPTION OF THE TRANSACTION**

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

22 In the interest of assuring seamless and uninterrupted service, all of the assigned customers
23 will continue to receive service from TNCI under the same rates, terms and conditions of services
24 as currently provided by Pac-West. Pac-West provides services only to wholesale carrier

1 customers in Arizona. Its contracts with those customers will be assigned to TNCI without any
2 changes in their rates, terms or conditions. Future changes in the rates, terms and conditions of
3 service to the affected customers will be undertaken pursuant to customer contracts and the
4 applicable federal and state notice and tariff requirements.

5 **V. PUBLIC INTEREST CONSIDERATIONS**

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

17 **VI. REQUEST FOR WAIVER OF SLAMMING AND CRAMMING RULES**

18 As noted above, customers will be notified of the proposed Transaction and the change in
19 their telecommunications provider from Pac-West to TNCI. *See* Exhibit A. Applicants
20 respectfully request, to the extent necessary, that the Commission grant a waiver of AAC R14-2-
21 1904 *et seq.* and any other applicable anti-slamming regulations that may be inconsistent with the
22 FCC's rules regarding the sale or transfer of customer bases.

23 Applicants also respectfully request that the Commission, to the extent necessary, grant a
24 waiver of AAC R14-2-2001-2007 (the "Cramming Rules"), which, among other things, require a

1 telecommunications company to obtain authorization from a customer when ordering
2 telecommunications products and services in order to prevent unauthorized carrier charges on their
3 bill. As described herein, TNCI is in the process of purchasing Pac-West's assets, including its
4 customers, and the affected customers will receive the same services as they currently receive
5 under the same rates, terms and conditions. Applicants do not believe that the Cramming Rules
6 apply to this proceeding because Pac-West's customers are being transferred to TNCI. No new
7 products and services are being ordered from TNCI and no new charges will be assessed as a
8 result of the Transaction.

9 To the extent that the Cramming Rules arguably apply to this Transaction, however,
10 Applicants respectfully submit that it is in the public interest to grant a waiver of the rules in this
11 case because current Pac-West customers will receive at least 30 days' notice of the Transaction as
12 required by the FCC's rules for the sale or transfer of customer bases; therefore, customers will be
13 given full notice that their current services will be provided by TNCI after the Transaction is
14 completed, and that there will be no change in the quality or cost of their services as a result of the
15 Transaction.

16 **VII. REQUEST FOR WAIVER OF DISCONTINUANCE RULES**

17 Applicants respectfully request that the Commission grant a waiver of AAC R14-2-1107,
18 which governs a telecommunications company's discontinuance of competitive local exchange or
19 interexchange services in the state. Applicants do not believe that the discontinuance rule applies
20 to this proceeding because it involves the purchase of Pac-West's assets (*i.e.*, its customers) by
21 TNCI; therefore, service to the acquired customers is not being discontinued.³ Current Pac-West

22 _____
23 ³ Commission Staff has previously come to this same conclusion. *See* Docket No. T-0376IA-04-
24 0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain
customers qualifies as a discontinuance of service or an abandonment of any portion of its service area.
Therefore, Staff does not believe that AAC R14-2-1107 applies").

1 customers will receive at least 30 days' notice of the Transaction as required by the Federal
2 Communications Commission's customer migration rules. It would be confusing for customers to
3 *also* receive a notice regarding a Pac-West discontinuance of service or for the planned customer
4 transfer notice to include a discussion regarding a discontinuance since no affected customer will
5 be discontinued as a result of the Transaction. *See* Decision No. 70706 (waiving discontinuance
6 rules in transfer of control case).

7 In the event that the Commission does not believe that a waiver of the rule in its entirety is
8 appropriate, Applicants respectfully request that the Commission grant a waiver of AAC R14-2-
9 1107(B), which requires a telecommunications company providing competitive local exchange or
10 interexchange service to publish legal notice of an application to discontinue or abandon services
11 in counties affected by the application within 20 days of the application. As stated herein, TNCI
12 will acquire the customer accounts of Pac-West in the state of Arizona, and those customers will
13 continue to receive high-quality telecommunications services at the same rates, terms and
14 conditions as currently provided by Pac-West. Written notice of this Transaction and of the
15 customer base transfer will be provided to Pac-West's Arizona customers via First Class mail at
16 least 30 days prior to the transfer. Published notice to the entire community is therefore
17 unnecessary. The Commission's waiver of R14-2-1107(B) will serve the public interest and
18 Applicants will provide the affected customers with adequate notice of the Transaction.

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

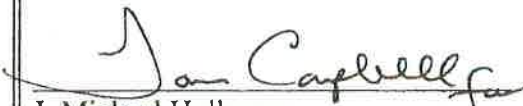
20 Following the Transaction, TNCI will hold Pac-West's customer accounts and assume its
21 operations in Arizona pursuant to TNCI's CCN. Therefore, Pac-West requests that, upon
22 notification from the Applicants that the Transaction is complete with regards to Arizona
23 customers and assets, the Commission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

24

1 **IX. CONCLUSION**

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

7 Respectfully submitted this 31st day of July, 2013.

8 

9 J. Michael Holloway
10 President & CEO
11 **PAC-WEST TELECOMM, INC.**
12 6500 River Place Blvd.
13 Building 2, Suite 200
14 Austin, Texas 78730
15 512-735-1206 (tel)
16 512-735-1220 (fax)
17 mholloway@pointone.com

8 

9 Michael T. Hallam
10 **LEWIS AND ROCA LLP**
11 40 North Central Avenue
12 Phoenix, AZ 85004-4429
13 602-262-5340 (tel)
14 602-734-3886 (fax)
15 mhallam@LRLaw.com

16 Counsel for TNCI Operating Company LLC

14 Original and 13 copies of the foregoing
15 filed this 31st day of July, 2013 with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

18 Copy of the foregoing mailed this
19 31st day of July, 2013 to:

20 Lyn Farmer, Esq.
21 Chief Administrative Law Judge
22 Hearing Division
23 Arizona Corporation Commission
24 1200 West Washington Street
Phoenix, Arizona 85007

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24


Janice Alward, Esq.
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. Steven M. Olea
Director, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Jayne Williams


STATE OF TEXAS)
)
COUNTY OF TRAVIS)

I, J. Michael Holloway, am President and CEO of UPH Holdings, Inc. and its subsidiaries including and Pac-West Telecomm, Inc., Tex-Link Communications, Inc. and nWire, LLC (collectively, the “Company”); that I am authorized to make this Verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to the Company are true and correct to the best of my knowledge, information, and belief.



J. Michael Holloway
President and CEO
UPH Holdings, Inc.
Pac-West Telecomm, Inc.
Tex-Link Communications, Inc.
nWire, LLC

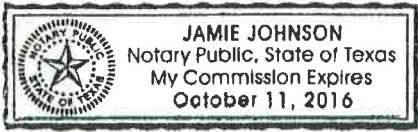
Subscribed and Sworn to me this 23rd day of July, 2013.



Notary Public

My Commission Expires: 10-11-16

SEAL




STATE OF MASSACHUETTES

COUNTY OF SUFFOLK

VERIFICATION

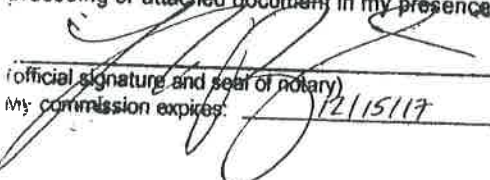
I, Jeff Compton, state that I am Chief Executive Officer and President of TNCI Operating Company LLC (the "Company"); that I am authorized to make this verification on behalf of the Company; that the foregoing filing was prepared under my direction and supervision; and that, with respect to the Company, the same are true and correct to the best of my knowledge, information and belief.



Jeff Compton
Chief Executive Officer and President
TNCI Operating Company LLC

[SEE ATTACHED MASSACHUETTES NOTARY FORM]

On this 24 day of JULY, 2013, before me, the undersigned notary public personally appeared Jeff Compton (name of document signer), proved to me through satisfactory evidence of identification, which were drivers license, to be the person whose name is signed on the preceding or attached document in my presence:



(official signature and seal of notary)
My commission expires: 12/15/17

EXHIBIT A

Sample Customer Notice