



State of Utah
Department of Commerce
Division of Public Utilities

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Executive Director

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Deputy Director

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Director, Division of Public Utilities

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Governor
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Lieutenant Governor

MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Chris Parker, Director *CP/BD*
Bill Duncan, Telecommunications / Water Manager *BD*
Ron Slusher, Utility Technical Consultant *RS*

Date: August 19, 2013

Re: 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 Certain Assets. Docket Number(s). 13-2431-02 and 13-2305-01.

RECOMMENDATION (Approve):

The Utah Division of Public Utilities ("Division") has reviewed the joint application between of TNCI Operating Company LLC, ("TNCI") and Pac-West Telecomm, Inc. (Debtor-In-Possession) ("Pac-West") (together, "Applicants"), and believes that the transfer of control is in the public interest. As a result of the acquisition, the TNCI will be able to provide the telecom services that were being provided by Pac-West without interruption to the current customers.

The Division expects that based on history that a filing of this type and with the information submitted by the company there will be no objections or opposition to this recommendation. Therefore, the Division request that this docket be adjudicated informally in accordance with R746-110-1.

EXPLANATION:

On or about August 05, 2013, TNCI and Pac-West notified the Public Service Commission ("Commission") of a transaction, which will result in the transfer of customer base and certain assets of Pac-West to TNCI.

TNCI is a Delaware limited liability company headquartered at 114 East Haley Street, Suite A, Santa Barbara, California, 93101. They are a wholly owned subsidiary of TNCI Holdings, LLC., which is owned by Garrison Investment Group. In Utah, TNCI is authorized to provide resold local exchange and resold intrastate interexchange telecommunications services pursuant to a

Certificate of Public Convenience and Necessity issued by the Commission in Docket No. 13-2431-01 on July 31, 2013.

Pac-West is a California corporation headquartered at 6500 River Place Blvd., Building 2, Suite 200, Austin, Texas 78730. They are a wholly owned subsidiary of UPH Holdings, Inc. 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. Pac-West currently has three wholesale/carrier customers in the state of Utah.

On March 28, 2013, UHP Holdings, Inc., the parent company of Pac-West, filed a voluntary petition 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. After an auction process, TNCI and UHP Holdings, Inc. enter into an asset purchase agreement dated July 03, 2013, for TNCI to acquire certain of the assets of the company. The Bankruptcy Court approved the agreement and the 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.

Upon completion of the transfer of customers and assets, the Applicants will notify the Commission and request that Pac-West's Certificate of Public Convenience and Necessity be cancelled.

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. The Applicants further submit, that in accordance with the terms of their service contracts and the applicable rules and procedures of the FCC and the state of Utah, 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 A.

The Division has reviewed the joint application between of TNCI and Pac-West (Debtor-In-Possession) and believes that the transfer of control is in the public interest. As a result of the acquisition, the TNCI will be able to provide the telecom services that were being provided by Pac-West without interruption to the current customers.

Cc. Sam Shiffman Executive Vice President, UPH Holdings, Inc.
Michael Holloway, Chief Executive Office, UPH Holdings, Inc.
Jeff Compton, President and CEO, TNCI Operating Company, LLC.
Jean L. Kiddoo, Counsel for TNCI Operating Company, LLC.



July xx, 2013

«Name»
«Address»
«City», «State» «Zip»

Dear Valued Customer:

Great news! TNCI Operating Company LLC ("TNCI") has reached an agreement with Pac-West Telecomm, Inc., Tex-Link Communications, Inc. and nWire, LLC (collectively, "Pac-West") to acquire their business, including your account. As part of this transition, TNCI will assure that you continue to receive the same great service and dedication to your telecommunications needs.

Please rest assured that the transaction will not affect the services you currently receive. You will continue to receive services with the same rates, features, terms and conditions as you currently enjoy. Any changes to your service following the transaction will be made in compliance with your contract, service terms and applicable federal and state regulatory requirements. TNCI will automatically become your telecommunications provider on or about September 5, 2013. (The specific date(s) of the transfer of your interstate and intrastate telecommunications services may differ somewhat depending upon when we receive the applicable federal and state regulatory approvals.)

This change will be completely seamless for you and you do not need to do anything in order for it to occur -- TNCI will take care of all of the details and TNCI will be responsible for any change fees associated with transferring your account to TNCI. However, it is important that you be aware of the following information. You are responsible for continued payment of your monthly recurring and usage charges throughout this period. Unless you have made arrangements on your own to switch your telecommunications service to a different telecommunications company prior to the date that your services are transferred to TNCI, your account will automatically be transferred and your service contract assigned to TNCI.¹ In addition, any deposit or prepayment you have paid, if any, will be transferred with your account to TNCI. Although subject to the terms of your current contract you have the option to select another telephone provider, we value your business and we hope that TNCI may continue to serve you. If you should choose another telephone provider you will need to contact that carrier directly to arrange for the change prior to the transfer of your services to TNCI and also provide TNCI with notice per existing service terms. We note that it can take several weeks for a new carrier to make the switch and you may also incur service initiation fees from that provider such as service order, installation and other similar charges associated with establishing a new service account.

Our mission is to provide superior products and services to our customers. We want to thank you for your continued support. Until your transfer to TNCI is complete, please contact your current Pac-West customer service department toll-free at 1-877-626-4325 if you have any questions regarding your current services or invoices. If you would like more information about the transaction or have questions concerning your services or invoices upon completion of your transfer to TNCI, please call TNCI's customer service department toll-free at 800-800-8400.

TNCI looks forward to serving you.

Sincerely,

Jeff Compton
President & Chief Executive Officer
TNCI Operating Company LLC

Michael Holloway
President & Chief Executive Officer
Pac-West Telecomm, Inc.
Tex-Link Communications, Inc.
nWire, LLC

¹ If you have previously arranged for a preferred carrier "freeze," TNCI will suspend that freeze in order to make the transfer and reinstate it upon completion of a transfer to TNCI. If you have selected an alternate local telephone provider prior to a transfer to TNCI, you will need to have that provider reinstate your preferred carrier freeze.

