

(“Peering Partners”) (collectively the “Debtors”), and file this their Motion for Order Authorizing the Debtors to Reject Unexpired Lease (6500 River Place Lease) Effective November 30, 2013 (the “Motion”) pursuant to 11 U.S.C. § 365(a). In support, the Debtors would show:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (O). The relief requested in this Motion is sought pursuant to 11 U.S.C. §§ 105(a) and 365(a), and Rule 6006 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”).

II. FACTUAL BACKGROUND

2. On March 28, 2013 (the “Petition Date”), the Debtors commenced their cases under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed. The Office of the United States Trustee has appointed an official committee of unsecured creditors in these cases (the “Committee”).

3. A detailed description of the background of the Debtors and the events leading up to the filing of the voluntary petitions by the Debtors, is provided in the Declaration of J. Michael Holloway in Support of First Day Motions, which is incorporated herein by reference.

III. RELIEF REQUESTED

4. Pursuant to this Motion, the Debtors respectfully request entry of an order authorizing the Debtors to reject the unexpired lease (“Lease”) and amendments thereto

identified in Exhibit "A." The Debtors request that the rejection of the Lease be effective as of November 30, 2013.

5. The Debtor UniPoint Holdings, Inc. entered into the Lease on February 12, 2002 with Investors Life Insurance Company of North America ("Investors") for office space in a building, commonly known as River Place Pointe II ("Premises"), located at 6500 River Place Blvd., Austin, TX. The Lease was subsequently assumed by MLIC Asset Holdings, LLC, the current lessor/landlord. The Debtor UniPoint Holdings, Inc. will cease operations at the Premises, vacate the Premises, and surrender possession and keys to the landlord on or before November 30, 2013. After November 30, 2013, the Debtor UniPoint Holdings, Inc. will no longer have a use for the Premises. Absent rejection of the Lease, pursuant to the Lease, the Debtor UniPoint Holdings, Inc. will continue to be obligated to pay rent for the remainder of the term of the Lease, even though, after November 30, 2013, it will no longer be continuing operations at the Premises and will have no other productive use for the Premises. The Lease provides for gradually increasing monthly base rental payments, and the estimated cost of the payments for the remaining term of the Lease after November 30, 2013 is about \$244,414.74. The Lease further provides that the Debtor UniPoint Holdings, Inc. is responsible for payment of additional amounts for taxes, utilities, insurance, monthly usage fees, and other charges associated with the Lease.

6. Pursuant to § 365(a) of the Bankruptcy Code, the Debtors may, subject to Court approval, reject unexpired leases and executory contracts. Section 365(a) provides, in pertinent part, that a debtor-in-possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." *See NLRB v. Bildisco & Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). In determining whether the rejection of an unexpired lease

or executory contract should be authorized, courts apply the business judgment standard. *See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1003); *In re Pilgrim's Pride Corp.*, 403 B.R. 413 (Bankr. N.D. Tex. 2009). Courts agree that the business judgment standard is satisfied when a debtor determines that such rejection will benefit the estate. *See In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

7. In addition, bankruptcy courts are empowered to authorize retroactive rejection of an executory contract or unexpired lease under § 365(a) of the Bankruptcy Code if the equities favor retroactive rejection. *See, e.g., Thinking Machines Corp. v. Mellon Financial Services Corp #1 (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995); *Stonebriar Mall Ltd. P'ship v. CCI Wireless, LLC (In re CCI Wireless, LLC)*, 297 B.R. 133, 138 (D. Colo. 2003).

8. After careful review and due deliberation, the Debtors have determined in their business judgment that the Lease is unnecessary to the continued operation of the Debtors' businesses, will have no value to the estate after November 30, 2013, and should be rejected. As stated above, in considering their options with respect to the Lease, the Debtors have determined that they will no longer have a need to use the Premises after November 30, 2013, and that there is no viable possibility other than rejection of the Lease effective on that date. As a consequence, the Lease will no longer be of use to the Debtors. Moreover, the Lease contains terms that are burdensome on the Debtors and have no residual value for the Debtors. Additionally, the Debtors do not believe that it is in the estates' best interest for the Debtors to spend time, focus, and money on attempting to market the Lease in an attempt to sublease it, even if permitted by the landlord. Accordingly, the purpose of the rejection requested herein is

to reduce the size and costs of the Debtors' operations, in the most efficient and expeditious way, to promote their successful reorganization.

9. In the business judgment of the Debtors, the rejection of the Lease and amendments identified in Exhibit "A" is in the best interest of the Debtors, their creditors, all other parties in interest, and should be approved. Through the rejection of the Lease and amendments thereto, the Debtors will be relieved from paying rent, as well as certain other costs, including taxes, utilities, insurance, monthly usage charges, and other charges associated with the Lease. By rejecting the Lease as of November 30, 2013, the Debtors will avoid incurring unnecessary administrative charges that will provide no tangible benefit to the Debtors' estate. The resulting savings from the rejection of the Lease will increase the Debtors' cash flow and assist in managing their estates, further promoting their reorganization. Moreover, rejection of the Lease effective as of November 30, 2013 is necessary and justified under the circumstances. After November 30, 2013, the Debtor UniPoint Holdings, Inc. will have vacated the Premises and surrendered possession and keys to the landlord. Thus, the Debtors believe that the rejection of the Lease effective November 30, 2013 is in the best interest of the Debtors' estates, their creditors, and other parties in interest.

WHEREFORE, PREMISES CONSIDERED the Debtors pray that the rejection of the Lease identified in the attached Exhibit "A" be approved, and that the Debtors have such other relief as is just.

Dated: November 1, 2013.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 2013, a true and correct copy of the foregoing has been served either electronically or via United States mail, postage prepaid, or facsimile to the following, and upon the parties listed on the attached Service List.

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EXHIBIT "A"

Title of Lease/Amendment	Lessor/Landlord	Date of Lease/Amendment
River Place Pointe II Lease Agreement	Investors Life Insurance Company of North America	February 12, 2002
First Amendment to River Place Pointe II Lease Agreement	Investors Life Insurance Company of North America	September 20, 2002
Second Amendment and Ratification of River Place Pointe II Lease Agreement Between Investors Life Insurance Company of North America, as Landlord, and UniPoint Holdings, Inc., as Tenant	Investors Life Insurance Company of North America	March 15, 2005
Third Amendment to Lease	River Place Point, L.P.	August 22, 2006
Fourth Amendment to Lease	MLIC Asset Holdings, LLC	January 15, 2010

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	§	CASE NO. 13-10577
COMMUNICATIONS, LLC	§	
	§	
DEBTORS	§	Jointly Administered Under
	§	
EIN: 45-1144038; 68-0383568; 74-2729541;	§	CASE NO. 13-10570
20-3399903; 74-3023729; 38-3659257; 37-	§	(Chapter 11)
1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200	§	
AUSTIN, TEXAS 78730	§	

**ORDER GRANTING DEBTORS' MOTION FOR ORDER
AUTHORIZING THE DEBTORS TO REJECT UNEXPIRED
LEASE (6500 RIVER PLACE LEASE) EFFECTIVE NOVEMBER 30, 2013**

CAME ON TO BE HEARD the Motion for Order Authorizing the Debtors to Reject Unexpired Lease (6500 River Place Lease) Effective November 30, 2013 (the "Motion") filed by UPH Holdings, Inc., ("UPH"), Pac-West Telecom, Inc., ("Pac-West"), Tex-Link Communications, Inc. ("Tex-Link"), UniPoint Holdings, Inc. ("UniPoint Holdings"), UniPoint Enhanced Services, Inc. ("UniPoint Enhanced"), UniPoint Services, Inc., ("UniPoint"), nWire, LLC ("nWire"), and Peering Partners Communications, LLC ("Peering Partners") (collectively the "Debtors"), The Court, having considered same, any response(s) thereto, and found that notice of the Motion was proper, is of the opinion that the Motion should be, and is hereby GRANTED in its entirety; it is therefore

ORDERED ADJUDGED and DECREED that the Motion is GRANTED; it is further

ORDERED that Lease (as defined in the Motion, and described in Exhibit "A" to the Motion) is hereby deemed rejected effective November 30, 2013.

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Order prepared and is being submitted by:

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