

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** February 16, 2018

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of Industry Development and Market Analysis (Wooten, Bates) *EW* *of* *cf*  
Division of Economics (McCoy) *DM*  
Office of the General Counsel (Cuello) *SAC* *cm* *F-TLT*

**RE:** Docket No. 20170217-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8604, issued to Pac-West Telecomm, Inc., effective March 19, 2013.

**AGENDA:** 03/01/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On December 2, 2005, the Florida Public Service Commission issued competitive local exchange telecommunications company (CLEC) Certificate No. 8604 to Pac-West Telecomm, Inc. (Pac-West or Company). On April 30, 2007, Pac-West filed for Chapter 11 bankruptcy protection in the US Bankruptcy Court for the Western District of Texas – Austin Division. On December 8, 2011, the Federal Communications Commission (FCC) granted a transfer of control of Pac-West to UPH Holdings, Inc., which is not certificated in Florida, and the bankruptcy case was terminated on March 19, 2013. Pac-West has not paid regulatory assessment fees and penalties and interest for years 2013, 2014, 2015, 2016, and 2017. Uncollected regulatory assessment fees were written off as uncollectible in years 2011 and 2012 due to the collections statute of limitations. All mail sent from the Commission is being returned by the US Postal Service

marked “unable to forward” and the telephone numbers on file for the company are out of service. There has been no response for requests to update contact information or data requests. Staff researched the Florida Department of State, Division of Corporations’ records, which show that the company’s last Annual Report was filed on April 26, 2012, and its corporate status was listed as “revoked for annual report” on September 27, 2013. The Company has no agent, and the last registered agent resigned on September 30, 2016. The Federal Communications Commission Form 499 Filer Database listed Pac-West as “(n)o longer active as of Jan 1, 2014.” It also stated “(a)ll assets of this company have been sold to another party.”<sup>1,2</sup>

The Commission has jurisdiction over this matter pursuant to Sections 364.02, 364.336, Florida Statutes.

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<sup>1</sup> PSC-05-1118-PAA-TX, issued December 2, 2005, Docket No. 050579-TX, *In re: Application for certificate to provide competitive local exchange telecommunications service by Pac-West Telecomm, Inc.*

<sup>2</sup> See Attachment B for supporting documents.

### **Discussion of Issues**

**Issue 1:** Should the Commission cancel Pac-West Telecomm, Inc.'s, CLEC certificate, service schedule (if any), and change the company's status to "cancelled" in the Master Commission Directory on its own motion effective the date the company's Chapter 11 Bankruptcy case was terminated; direct the Division of Administrative and Information Technology Services (AIT) to write off any statutory late payment charges, or penalty and interest instead of requesting collection services; and require the company to immediately cease and desist providing telecommunications services in Florida?

**Recommendation:** Yes, the Pac-West's CLEC certificate should be cancelled on the Commission's own motion due to the company lack of payment of regulatory fees. AIT should write off any unpaid statutory late payment charges, or penalty and interest instead of requesting collection service. (Wooten, Bates, McCoy)

**Staff Analysis:** See attachment A, proposed Order. (staff analysis)

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Cuello)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

*In re:* Bankruptcy cancellation by Florida  
Public Service Commission of CLEC  
Certificate No. 8604 issued to Pac-West  
Telecomm, Inc., effective March 19, 2013.

DOCKET NO. 20170217-TX

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman  
JULIE I. BROWN  
DONALD POLMANN  
GARY F. CLARK  
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION  
ORDER CANCELLING COMPETITIVE LOCAL EXCHANGE  
TELECOMMUNICATIONS COMPANY CERTIFICATES  
AND SERVICE SCHEDULES DUE TO BANKRUPTCY  
ON THE COMMISSION'S OWN MOTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pac-West Telecomm, Inc. (Pac-West) currently holds competitive local exchange telecommunications services (CLEC) Certificate No. 8604, issued by the Commission on December 2, 2005.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Pursuant to 11 U.S.C. § 362 (b)(4) of the US Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. RAFs, late payment charges, and penalties owed by a company to the Florida Public Service Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are

uncollectible. Therefore, this Commission would be prevented from collecting the RAFs owed by these companies, and from assessing and collecting a penalty for failure to pay the fees.

This Commission monitors companies that have previously filed for bankruptcy protection to further attempt collection of the past due RAFs. Monitoring is conducted using internet-based Public Access to Court Electronic Records (PACER). In many cases, companies under bankruptcy protection discontinue providing telecommunications services and close their operations.

PACER indicates that Pac-West filed for Chapter 11 bankruptcy protection in the US Bankruptcy Court for the Western District of Texas – Austin Division on April 30, 2007. On December 8, 2011, the Federal Communications Commission granted a transfer of control of Pac-West Telecomm, Inc. to UPH Holdings, Inc., which is not certificated in Florida. The bankruptcy case was terminated on March 19, 2013. All mail from this Commission is being returned by the US Postal Service marked “unable to forward” and the telephone numbers on file for the company are out of service. There has been no response for requests to update contact information and data requests from the Commission. Pac-West has not paid regulatory fees and penalties and interest in years 2013, 2014, 2015 and 2016. We have researched the Florida Department of State, Division of Corporations’ records, which show that the company’s last Annual Report was filed on April 26, 2012, and its corporate status was listed as “revoked for annual report” on September 27, 2013. It has no agent, and the last registered agent resigned on September 30, 2016. The Federal Communications Commission Form 499 Filer Database listed Pac-West Telecomm, Inc. as “(n)o longer active as of Jan 1, 2014.” It also stated “(a)ll assets of this company have been sold to another party.”

Pac-West’s bankruptcy case has closed, and it appears to no longer be providing service in Florida and to no longer exist. We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.285, Florida Statutes.

Accordingly, we shall cancel Pac-West’s CLEC certificate, service schedule (if any), and remove its name from the Master Commission Directory on this Commission’s own motion, effective March 19, 2013. In addition, any unpaid statutory late payment charges, or penalty and interest shall not be sent to the Florida Department of Financial Services for collection, and permission for this Commission to write off the uncollectible amount shall be requested.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pac-West Telecomm, Inc.’s CLEC Certificate No. 8604 is cancelled and its status changed to “cancelled” in the Master Commission Directory, effective March 19, 2013. It is further

ORDERED that each entity’s unpaid statutory late payment charges, or penalty and interest, shall not be sent to the Department of Financial Services for collection. The Division of Administrative and Information Technology Services shall request permission to write-off the uncollectible amount. It is further

ORDERED that if Pac-West Telecomm, Inc.'s respective CLEC certificate and service schedule (if any) are cancelled and its status changed to "cancelled" in the Master Commission Directory in accordance with this Order, the entity shall immediately cease and desist providing telecommunications service in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, F.A.C., is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Carlotta Stauffer  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SAC

FILED JUN 15, 2015  
DOCUMENT NO. 03654-15  
FPSC - COMMISSION CLERK

**Nonnye Grant**

To: Bob Casey  
Subject: RE: Companies out of chapter 11 bankruptcy

15 0000-0 T

Good afternoon Bob, appreciate the email regarding removing the "bankruptcy status" from TX857 - Pac West Telecomm. I will remove that status per your memo. Again, thanks for letting me know that it needs to be removed. Thanks and have a nice day. Nonnye

From: Bob Casey  
Sent: Monday, June 15, 2015 2:00 PM  
To: Nonnye Grant  
Cc: Beth Sojak; Toni Earnhart; Bob Casey  
Subject: RE: Companies out of chapter 11 bankruptcy.

I have one more for you to mark out of Chapter 11 bankruptcy. Toni is following up on RAfs owed.

TX 857 - Pac-West Telecomm, Inc. exited Chapter 11 bankruptcy 3/19/2013.

07-10562-BLS Pac West Telecomm, Inc.  
Case type: BK Chapter: 11 Asset: Yes Vol: 3 Judge: Brendan Finchan Shannon  
Date filed: 04/30/2007 Date of last filing: 04/08/2013 Plan confirmed: 11/19/2007  
Date terminated: 03/19/2013

**Case Summary**

Office: Delaware Filed: 04/30/2007  
County: OUTSIDE Terminated: 03/19/2013  
HOME STATE:  
Fees Paid Debtor discharged:  
Origin: 0 Reopened:  
Previous term: Converted:  
Debtor dismissed:  
Joint: 0 Confirmation hearings:  
Current chapter: 11  
Debtor disposition: Discharge Not Applicable  
Nature of debt: business  
Related adversary proceedings: 08-50608-KG  
Pending status: Awaiting First Meeting, Case Closed  
Flags: LEAD, CONFIRMED, CLOSED

15 JUN 15 PM 2:22  
RECEIVED  
COMMISSION CLERK

Trustee: United States Trustee City: Wilmington Phone: Fax: 302-573-6497 Email: 6497  
Party 1: Pac-West Telecomm, Inc. (Debtor) [USTPRIV@ONJD.WV.FCP@USDOL.GOV](mailto:USTPRIV@ONJD.WV.FCP@USDOL.GOV)  
Tax ID / EIN: 68-0383568



**Federal Communications Commission**  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

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**DA 11-1865**  
**Released: November 7, 2011**

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF  
PAC-WEST TELECOMM, INC. AND NWIRE, LLC**

**STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 11-173**

**Comments Due: November 21, 2011**  
**Reply Comments Due: November 28, 2011**

On October 14, 2011, UPH Holdings, Inc. (UPH), UPH Acquisition Sub Inc. (UPH-AS), Pac-West Acquisition Company, LLC (PWAC), and Pac-West Telecomm, Inc. (Pac-West) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules<sup>1</sup> to transfer Pac-West, including its U.S.-based wholly-owned subsidiaries, Pac-West Telecomm of Virginia, Inc. and Tex-Link Communications, Inc., as a result of the planned acquisition of 100 percent of the shares of Pac-West by UPH. As part of the proposed transaction, Applicants also request authority to transfer control of nWire, LLC, an indirect subsidiary of UPH, upon the current shareholders in PWAC obtaining an ownership interest in UPH.

**Federal Communications Commission**  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

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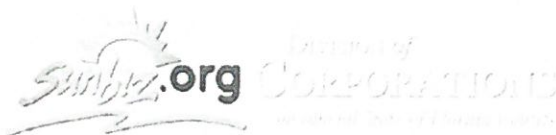
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**DA 11-1999**  
**December 8, 2011**

**NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED**

**WC Docket Nos. 11-173**

The Wireline Competition Bureau (Bureau) has granted the application listed in this notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 C.F.R. § 63.03. The Bureau has determined that grant of this application serves the public interest.<sup>1</sup> For purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this notice.<sup>2</sup>



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail by Document Number](#) /

## Detail by Entity Name

Foreign Profit Corporation

**PAC-WEST TELECOMM, INC.**

### Filing Information

<b>Document Number</b>	F05000004643
<b>FEI/EIN Number</b>	68-0383568
<b>Date Filed</b>	08/10/2005
<b>State</b>	CA
<b>Status</b>	INACTIVE
<b>Last Event</b>	REVOKED FOR ANNUAL REPORT
<b>Event Date Filed</b>	09/27/2013
<b>Event Effective Date</b>	NONE

### Principal Address

4210 CORONADO AVENUE  
SUITE 300  
STOCKTON, CA 95204 UN

Changed: 04/26/2012

### Mailing Address

4210 CORONADO AVENUE  
STOCKTON, CA 95204


Changed: 03/14/2007

### Registered Agent Name & Address

NONE

Registered Agent Resigned: 09/30/2016

## FCC Form 499 Filer Database DETAILED INFORMATION

 [Form 499 Filer 808317 RSS Feed](#)

### Filer Identification Information

**No Longer Active as of Jan 1 2014 .**  
**All assets of this company have been sold to another party.**

Replaced by filer: [829775](#)

### Historical Data:

499 Filer ID Number:	808317
Registration Current as of:	Apr 1 2013 12:00AM
Legal Name of Reporting Entity:	Pac-West Telecomm, Inc.
Doing Business As:	Pac-West Telecomm, Inc.
Principal Communications Type:	CAP/LEC
Universal Service Fund Contributor:	No
	(Contact USAC at 888-641-8722 if this is not correct.)
Holding Company:	UNIPOINT HOLDINGS INC
Registration Number (CORESID):	0001735224
Management Company:	
Headquarters Address:	6500 River Place Blvd
	Bldg. 2 Ste. 200
	City: Austin
	State: TX
	ZIP Code:
Customer Inquiries Address:	4210 Coronado Ave
	City: Stockton
	State: CA
	ZIP Code: 95204
Customer Inquiries Telephone:	877-626-4325 Ext:
Other Trade Names:	

State of Florida  
**Public Service Commission**  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850



7006 0100 0003 1098 9622

N/K  
11/28

(Enc)

TX857  
Pac-West Telecomm. Inc.  
Lyane Martinez  
Regulato  
4210 Co  
Stockton

12/23

NIXIE 957 DE 1 0001/12/17

RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD

PK: 32399003099 \*0741-06947-28-18

OFFICE OF  
TELECOMMUNICATIONS

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