

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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COMMISSION
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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 COMMUNICATIONS, LLC	§	CASE NO. 13-10577

DEBTORS. § CHAPTER 11

EIN: 45-1144038; 68-0383568; 74-
2729541; 20-3399903; 74-3023729; 38-
3659257; 37-1441383; 27-2200110; 27-
4254637

6500 RIVER PL. BLVD., BLDG. 2, # 200 § *JOINT ADMINISTRATION*
AUSTIN, TEXAS 78730 § *REQUESTED*

**DEBTORS' EMERGENCY MOTION FOR ORDER (1) AUTHORIZING
CONTINUED USE OF EXISTING BUSINESS FORMS AND RECORDS AND (2)
AUTHORIZING MAINTENANCE OF EXISTING CORPORATE BANK ACCOUNTS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW UPH Holdings, Inc., ("UPH"), Pac-West Telecomm, Inc., ("Pac-West"),
Tex-Link Communications, Inc. ("Tex-Link") UniPoint Holdings, Inc. ("UniPoint Holdings"),
UniPoint Enhanced Services, Inc. ("UniPoint Enhanced Services"), UniPoint Services, Inc.,
("UniPoint Services"), nWire, LLC ("nWire"), and Peering Partners Communications, LLC
("Peering Partners") (collectively the "Debtors"), the Debtors-In-Possession in this case, and file
this their Emergency Motion for Order (1) Authorizing Continued Use of Existing Business
Forms and Records (2) Authorizing Maintenance of Existing Corporate Bank Accounts

“Motion”). In support thereof, the Debtors would respectfully show as follows:

I. JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue of the Debtors’ Chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Court has the authority to enter the requested relief under Bankruptcy Code § 105.

II. BACKGROUND

2. On March 25, 2013 (“Petition Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, *et. seq.* (as amended, the “Bankruptcy Code”). The Debtors are debtors-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. A 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.

4. The Debtors are a group of affiliated entities that provide telecommunication services in a variety of contexts including voice over Internet protocol (“VoIP”), local exchange and enhanced telecommunications, and data services. A brief background of each of the Debtors follows:

A. Corporate Organization

(a) UPH Holdings, Inc.

5. UPH Holdings, Inc. (“UPH”) is a Delaware corporation headquartered in Austin, Texas. UPH is a privately held, non-operating holding company with investments in the UniPoint Holdings and Pac-West, and indirect investments in subsidiaries of those two companies. UPH does not currently hold any authorizations to provide telecommunications services. UPH was formed to

hold the stock of UniPoint Holdings, and its subsidiaries, Peering Partners, and nWire. UPH then acquired the stock in Pac-West pursuant to a Merger Agreement dated September 7, 2011. As a result of these various transactions and the Pac-West Merger Agreement, UPH is now the holding company for UniPoint Holdings, Inc. and Pac-West Telecomm, Inc. All other Debtors are subsidiaries of either UniPoint Holdings, Inc. or Pac-West Telecomm, Inc.

(b) UniPoint Holdings, Inc.

6. UniPoint Holdings, Inc., a Delaware corporation, (“UniPoint Holdings”) provides enhanced product and service offering to meet the needs of rapidly evolving communications world, primarily in the wholesale arena. Products and services offered by UniPoint Holdings include: business and residential communications services, IP peering, unbundled VoIP network elements, direct Internet access, virtual private networks, virtual network elements, origination, termination, toll-free, and other cloud-based services. UniPoint Holdings was formed in 2001 to acquire the assets of PointOne Communications, Inc. and its various subsidiaries out of the chapter 11 reorganization case, *In re PointOne Communications, Inc.*, in the United States Bankruptcy Court for the Western District of Texas, Case No. 01-12978-FRM.

(c) Pac-West Telecomm, Inc.

7. Pac-West Telecomm, Inc., a California corporation (“Pac-West”), provides advanced telecommunications and data services, enabling traditional and next-generation carriers to efficiently design, deploy, and deliver integrated communications solutions. Pac-West offers origination, termination, managed modem, co-location, database, and transport services. Pac-West currently operates as a competitive local exchange carrier (“CLEC”) and holds a certificate of public convenience and necessity (“CPCN”) in California, Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota,

Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. Pac-West is also certified as a competitive carrier in the District of Columbia. Pac-West currently offers all forms of telecommunications, including: local and long distance origination and termination; switched and special access; 8YY originating access and 8YY services; managed modem; and collocation services.

(d) Peering Partners Communications Holdings, LLC

8. Peering Partners Communications Holdings, LLC, (“Peering Partners”) is a Texas LLC, qualified to do business in the State of Nevada. Peering Partners was formed for the purposes of acquiring the carrier services division of CommPartners Holding Corporation (“CommPartners”)¹ that provides wholesale origination and termination services to other carriers throughout the United States. Peering Partners has contracts with either enhanced service providers (“ESP”s), who generate IP-based traffic, or other carriers who, in turn, have contracted with ESPs, who generate IP-based traffic, to have the traffic carried across Peering Partners’ network, convert the traffic to TDM, and hand it off to the terminating carrier. Peering Partners operates in a highly competitive and price-sensitive segment.

(e) nWire LLC

9. nWire LLC (“nWire”), a Texas LLC, is a facilities-based CLEC certified to provide services in Texas, Arkansas, and Oklahoma.

(f) UniPoint Services, Inc.

10. UniPoint Services, Inc. (“UniPoint Services”) is a Texas corporation that buys and sells unbundled network communications elements.

¹ The acquisition of the CommPartners Carrier Services division closed on December 23, 2010, and was approved in In re CommPartners Holding Corporation, Case No. BK-S-10-20932-LBR; in the United States Bankruptcy Court for the District of Nevada.

(g) UniPoint Enhanced Services, Inc.

11. UniPoint Enhanced Services, Inc. (“UniPoint Enhanced Services”) is a Texas corporation that provides enhanced services.

(h) Tex-Link Communications, Inc.

12. Tex-Link Communications, Inc. (“Tex-Link”) is a telecommunications company that provides customized voice and data services to small and medium-sized businesses through a facilities-based local exchange and inter-exchange network.

B. Events Leading up to the Petition Date

13. Following the merger with PacWest, the Debtors have struggled to retire overhang debt predating the merger. In addition, carrier services and other wholesale services are subject to increasing downward price pressures that will only increase given recent regulatory pronouncements. In addition, the Ninth Circuit recently reversed the ruling of the California Public Utilities Commission (“PUC”) concerning certain CLEC-to-CLEC state access tariff charges that Pac-West had been awarded from Comcast Phone of California and other California CLECs.² This reversal will also potentially affect access tariffs collected in other states. Economically, this ruling means that access tariffs paid to Pac-West five to ten years ago will now have to be refunded to various sister CLECs. Further, although the CLECs are owed the refund, those same CLECs and various affiliates owe the Debtors a roughly equal amount, but refuse to offset these sums and are now threatening disconnection of services to the Debtors or other collection remedies.

14. To avoid the loss of any of its network facilities or functionality, the Debtors determined to initiate these proceedings to maximize the value of the estate for the benefit of all

² AT&T Communications of California, Inc. v. Pac-West Telecomm, Inc., 651 F.3d 980 (9th Cir. 2011).

creditors, to provide a forum for resolution of the offsetting accounts, and to treat each of the Debtors' creditors *pari passu*.

15. Although the Debtors continue to struggle with overhang debt and the Ninth Circuit reversal, recent regulatory rulings will provide the necessary certainty that has eluded competitive exchange carriers, enhanced service providers, and VoIP networks for nearly two decades. Without the burden of overhang debt and secured debt service, the Debtors have positive cash flow and anticipate additional revenue growth.

16. The Debtors filed these Chapter 11 cases to pursue a reorganization. The Debtors expect to continue core activities pertaining to each of its business units during the reorganization process, including focusing upon its telecommunication business, and anticipate emerging successfully from Chapter 11. As part of the reorganization process, the Debtors will seek to retain a financial advisor to aid the Debtors in their reorganization efforts. The instant Motion is directed at the Debtors' ability to maintain and use their prepetition bank accounts.

III. RELIEF REQUESTED AND SUPPORTING AUTHORITIES

17. By this Motion, the Debtors respectfully request the entry of an order (i) authorizing the Debtors to continue using their existing business forms and records; (ii) authorizing the Debtors to maintain their existing corporate bank accounts and cash management system; and (iii) authorizing the Debtors to pay their Monthly Bank Account Fees (as hereinafter defined).

18. The Office of the United States Trustee (the "Trustee") has established certain operating guidelines for debtors-in-possession to supervise the administration of Chapter 11 cases. These guidelines require Chapter 11 debtors, to among other things, close all existing bank accounts and open new debtor-in-possession ("DIP") bank accounts, establish one DIP account for all estate monies required for the payment of taxes, maintain a separate DIP account for cash collateral, and obtain

checks for all DIP accounts that bear the designation “debtor-in-possession,” the bankruptcy case number, and the type of account. The guidelines also require the debtors to close their books and records as of the petition date and to open new books and records. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. Through this Motion, the Debtors seek a waiver of certain of these requirements.

19. Section 105 of the Bankruptcy Code provides in pertinent part that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Extensive authority supports the relief that the Debtors seek in this Motion. In fact, in other Chapter 11 cases, courts have recognized that strict enforcement of the United States Trustee requirements does not always serve the purposes of Chapter 11. In that vein, courts have often waived such requirements, and instead, replaced them with alternative procedures. *See, e.g., In re The National Benevolent Association of the Christian Church (Disciples of Christ), et. al.*, Chapter 11 Case No. 04-50948 (Bankr. W.D. Tex. Feb. 20, 2004) (Interim Order Authorizing Debtors’ Expedited Motion for (I) the Continuation of the Existing Cash Management System; (II) the Maintenance of Existing Bank Accounts and Business Forms; and (III) the Approving the Investment Guidelines; *In re Lothian Oil Inc., et. al.*, Chapter 11 Case No. 07-70121 (Bankr. W.D. Tex. June 15, 2007) (Order Granting Debtors’ Emergency Motion for Order (I) Authorizing Continued Use of Existing Business Forms and Records; and (II) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System). In addition, other courts within the Fifth Circuit have granted similar relief. *See, e.g., In re Encompass Svcs. Corp.*, Case No. 02-43582-H4-11 (Bankr S.D. Tex. Nov. 20,

2002); *In re Sterling Chem. Holdings, Inc.*, Case No. 01-37805-H4-11 (Bankr. S.D. Tex. Aug. 22, 2001).

C. Existing Business Forms and Records

20. The Debtors currently have control over their books and records. The Debtors respectfully submit that opening a new set of books and records would create unnecessary administrative burdens as well as administrative hardship. It would also cause unnecessary expense and delay, including the Debtors' use of cash collateral. Through their use of computerized books and records, the Debtors can easily distinguish between pre and post-petition transactions by date. Moreover, because the Debtors use checks, invoices, stationery, and other business forms in the ordinary course of their businesses, the Debtors need to continue to use their existing business forms without unnecessary alteration. The Debtors respectfully request that they be authorized to continue to use their existing business forms and to maintain their existing business records.

D. Existing Corporate Bank Accounts and Cash Management Systems

21. The Debtors respectfully request authority to maintain their existing bank accounts ("Bank Accounts") in accordance with their usual and customary practices to ensure a smooth transition into Chapter 11 with minimal disruption to their operations. The Debtors also seek authority to close any Bank Accounts if the Debtors determine that closing a particular Bank Account is in the best interest of their estates. Prior to the Petition Date, Debtors maintained, in the ordinary course of their businesses, various Bank Accounts. Customers of the Debtors make payments to various of these Bank Accounts. The Bank Accounts are designated as follows:

<u>DEBTOR</u>	<u>ACCOUNT NO.</u>	<u>DESCRIPTION</u>	<u>INSTITUTION</u>
UPH Holdings	1893076487	Operating	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
UniPoint Holdings, Inc.	583824683	Payroll	Frost Bank P.O. Box 1727 Austin, Texas 78767
UniPoint Holdings, Inc.	585717787	Money Market	Frost Bank P.O. Box 1727 Austin, Texas 78767
UniPoint Holdings, Inc.	1892629567	Operating	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
UniPoint Holdings, Inc.	1892629575	ACH Account	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
UniPoint Holdings, Inc.	1892629633	Merchant Account	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
UniPoint Holdings, Inc.	1892024330	Money Market	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
nWire	1881324204	Operating Account	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
Peering Partners	1881432155	Operating Account	Comerica San Jose Airport 226 Airport Parkway San Jose, CA 95110
PacWest	153495101096	Operating	US Bank, NA
PacWest	1534951010696	Disbursements	US Bank, NA
PacWest	153495560127	Money Market	US Bank, NA

PacWest	1881642654	Receipts Account	Comerica 300 W 6th St, Ste 1300 Austin, TX 78701
PacWest	1881642662	Disbursements Account	Comerica 300 W 6th St, Ste 1300 Austin, TX 78701
PacWest	1881642670	Client Account	Comerica 300 W 6th St, Ste 1300 Austin, TX 78701

22. The Debtors seek a waiver of the United States Trustee's requirements that Bank Accounts be closed and new postpetition bank accounts be opened. If enforced in this case, the United States Trustee's requirements would cause enormous disruption in the Debtors' business. The maintenance of the Bank Accounts would greatly facilitate the Debtors' "seamless transition" to postpetition operations and would allow the Debtors to avoid delays in payment of debts incurred on a postpetition basis, while alienating as few of the Debtors' vendors and creditors as possible. In furtherance of these goals, and for the benefit of the Debtors' bankruptcy estates, the Debtors should be permitted to continue to maintain the existing Bank Accounts, have those accounts swept on a regular basis (and the Lender may take ACH payments for any amounts authorized under the prevailing cash collateral order and budget) and deposited into a designated debtor-in-possession bank account with Comerica Bank ("Comerica") ("Comerica DIP Bank Account"). The Debtors will work with Comerica to facilitate this transition. Importantly, Comerica is an authorized depository in Region 7 of the Office of the United States Trustee. The Debtors will also monitor all Bank Accounts to ensure that their balances will not exceed the FDIC-insured limit. In addition, the Debtors will instruct Comerica to add the designation "debtor-in-possession" or "DIP" to the Comerica DIP Bank Account, and will treat the Comerica DIP Bank Account for all purposes as a DIP, and accordingly, will maintain records that recognize the distinction between prepetition and postpetition transfers.

23. Otherwise, if the Debtors were to close all of their Bank Accounts only to reopen new ones, the Debtors' business operations likely will be disrupted because dozens of the Debtors' customers have automatic payment protocols and existing wire transfer instructions that are difficult to change; the task of operating new Bank Accounts will be at the very least time consuming and distracting, and at worse, disruptive and detrimental. All parties-in-interest will be best served, thus benefitting the Debtors' estates, if the Debtors are able to maintain their existing Bank Accounts and have them swept on a regular basis into the Comerica DIP Bank Account. Otherwise, the resultant confusion and delay in customer payments would undermine the purposes of the Debtors' attempt at reorganization under Chapter 11.

24. If the relief requested herein is granted, the Debtors will not intentionally pay, and each of the banks where the Bank Accounts are maintained (the "Banks") will be specifically directed not to pay, any debts incurred by Debtors prior to the Petition Date, other than as expressly authorized by this Court.

25. Without the ability to use and maintain their prepetition Bank Accounts, the Debtors will suffer immediate and irreparable harm. In fact, without such relief, the Debtors will be forced to drastically alter their ordinary-course business practices. As such, the Debtors face the risk that their operations may be severely impaired if authority is not granted immediately.

26. In light of the foregoing, the Debtors respectfully submit that the relief requested represents an exercise of the Debtors' sound business judgment, is in the best interests of the Debtors' estates and creditors, and is necessary to prevent immediate and irreparable harm to these estates.

WHEREFORE, PREMISES CONSIDERED, the Debtors respectfully request that the Court enter an order (i) granting the Motion; (ii) authorizing the Debtors' continued use of existing business forms and records; (iii) authorizing maintenance of the Debtors' existing Bank Accounts;

(iv) authorizing the Debtors to continue paying their monthly Bank Account fees; and (v) granting such other and further relief to which the Debtors are justly entitled.

Dated: March 28, 2013.

Respectfully submitted,

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**PROPOSED COUNSEL FOR
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 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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