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

<b>IN RE:</b>	§	
<b>UPH HOLDINGS, INC.</b>	§	<b>CASE NO. 13-10570</b>
<b>PAC-WEST TELECOMM, INC.</b>	§	<b>CASE NO. 13-10571</b>
<b>TEX-LINK COMMUNICATIONS, INC.</b>	§	<b>CASE NO. 13-10572</b>
<b>UNIPOINT HOLDINGS, INC.</b>	§	<b>CASE NO. 13-10573</b>
<b>UNIPOINT ENHANCED SERVICES, INC.</b>	§	<b>CASE NO. 13-10574</b>
	§	
<b>UNIPOINT SERVICES, INC.</b>	§	<b>CASE NO. 13-10575</b>
<b>NWIRE, LLC</b>	§	<b>CASE NO. 13-10576</b>
<b>PEERING PARTNERS COMMUNICATIONS, LLC</b>	§	<b>CASE NO. 13-10577</b>

**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  
AUSTIN, TEXAS 78730**

**JOINTLY ADMINISTERED UNDER  
CASE NO. 13-10570**

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**TRUSTEE'S OBJECTION TO SECOND APPLICATION FOR ALLOWANCE  
AND IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM  
(FOR SEPTEMBER 30, 2013 THROUGH JUNE 30, 2014 TIME PERIOD)**

TO THE UNITED STATES BANKRUPTCY JUDGE TONY M. DAVIS:

COMES NOW Lowell Feldman, Liquidating Trustee for the UPH Liquidating Trust ("Trustee"), and files this his Objection to the Second Application for Immediate Payment of Administrative Expense Claim by Cogent Communications, Inc. ("Objection"), and in opposition thereto would show:

**I. INTRODUCTION**

1. Cogent's Application requests payment as an administrative expense of \$240,378.82 for post-petition services that it asserts it performed for the Debtors subsequent to September 30, 2013, even though such amounts necessarily would have to have been incurred following the sale to TNCI

Operating Co. (“TNCP”) and for which the APA with TNCI clearly obligates TNCI, not the Debtors. Cogent’s Application comes on the heels of resolution of its first request for payment of administrative expenses, for expenses allegedly incurred prior to September 30, 2013, to which the Debtors raised the same arguments they raise herein against the present Application. The APA plainly obligates TNCI to pay amounts incurred for post-Petition Date account payables, not the Debtors. Further, Cogent cannot meet its burden to prove that the costs for which it seeks administrative claim priority were for the actual, necessary costs of preserving the Debtors’ estate, when the Debtors had already sold substantially all of their assets to TNCI. Accordingly, the Application should be denied.

## **II. BACKGROUND**

2. On March 28, 2013 (the “Petition Date”), the above-referenced Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

3. On March 27, 2014, the Bankruptcy Court entered its Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Chapter 11 Plan of Reorganization (“Confirmation Order”) [Bankr. Dckt. No. 842]. The Confirmation Order confirmed the Plaintiffs’ Chapter 11 Plan, and approved the Debtors’ selection of Lowell Feldman (“Feldman”) as the Liquidating Trustee of the UPH Liquidating Trust, which was created under the Plan. *See* Confirmation Order, p. 22.

4. On July 9, 2013, the Debtors filed their Fifth Omnibus Motion for Order Approving the Rejection of Unexpired Contracts & Leases *Nunc Pro Tunc* to Petition Date (“Motion to Reject”) [Dckt. No. 308]. Attached to the Motion to Reject was Exhibit A, which, as set forth in the Motion, listed the contracts the subject of the Motion to Reject and identified the counterparties to such contracts. The Motion to Reject further set forth that the Debtors “will provide copies of the Contracts upon the request of an interested party in this matter as the documents are voluminous and production other than on request would be burdensome and expensive.” *See* Motion to Reject, ¶ 5. Cogent, and several circuits related to Cogent were listed on Exhibit A. On August 27, 2013, the Court entered its



Order Granting Debtors' Fifth Omnibus Motion for Order Approving the Rejection of Unexpired Contracts *Nunc Pro Tunc* to the Petition Date ("Fifth Omnibus Rejection Order") [Dckt. No. 488]. The Fifth Omnibus Rejection Order provided that the Motion was granted as to Cogent, and the contracts regarding Cogent were deemed rejected as of the Petition Date. *See* Fifth Omnibus Rejection Order, p.2.

5. On July 2, 2013, the Debtors filed their Notice of Cure Amounts and Deadline for Objection to Cure Amounts ("Cure Notice") [Dckt. No. 293], in which the Debtors set forth proposed Cure Amounts (as defined therein), and which listed Cogent. On July 15, 2013, Cogent filed its Objection to the Cure Notice [Dckt. 349].

6. On July 23, 2013, the Court entered its Order Granting Debtors' Motion for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II) Authorizing the (A) Sale of Substantially All the Debtors' Assets, (B) Payment of the Net Proceeds of Sale to Hercules Technology II, L.P., and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ("Sale Order") [Docket No. 446]. Pursuant to the Sale Order, the Court approved the Asset Purchase Agreement ("APA") and the sale ("Sale") of substantially all of the Debtors' assets to TNCI Operating Company, LLC ("TNCI" or "Buyer"). A copy of the APA is attached hereto as Exhibit 1.

7. On October 22, 2013, the Debtors filed their Motion to Assume & Assign Certain Contracts ("Motion to Assume") [Dckt. No. 574], which requested authority, among other things to assume and assign certain contracts with Cogent to TNCI. On November 12, 2013, Cogent filed its Objection of Cogent Communication Inc. to Debtors' Motion to Assume and Assign Certain Contracts [Dckt. No. 614]. On December 6, 2013, the Debtors filed their Amended Notice of Withdrawal Without Prejudice of Debtors' Motion to Assume & Assign Certain Contracts as to Cogent

Communications, Inc. (“Amended Withdrawal”) [Dckt. No. 644]. In the Amended Withdrawal, the Debtors withdrew their Motion to Assume as against Cogent.

8. On December 4, 2013, the Court entered its Order Setting Deadline for Requests for Payment of Certain Administrative Expenses, and Approving Form, Manner, and Sufficiency of Notice Thereof (“Administrative Bar Claim Order”) [Dckt. No. 637]. Pursuant to the Administrative Bar Claim Order, the Court set February 4, 2014 as the Administrative Expense Bar Date for any person to assert any claim against the Debtors for “the actual, necessary costs and expenses or preserving the estate” pursuant to 11 U.S.C. § 503(b) arising after March 28, 2013, and prior to September 30, 2013.

9. On or about February 4, 2014, Cogent Communication, Inc. (“Cogent”) filed its Application for Allowance and Immediate Payment of Administrative Expense Claims (“First Application”). The Debtors objected to the First Application via their Objection to Application for Immediate Payment of Administrative Expense Claim by Cogent Communications, Inc. [Dckt. No. 824]. On July 18, 2014, the Court entered its Agreed Order on Cogent Communication Inc.’s Application for Allowance and Immediate Payment of Administrative Expense Claims (“Agreed Order on First Application”) [Dckt. No. 975], pursuant to which the First Application was dismissed with prejudice to the extent that it asserted a claim or administrative claim for amounts asserted or owed for services provided to the Debtors prior to September 30, 2013.

10. On August 15, 2014, Cogent filed its Application, asserting that Cogent has provided post-petition services subsequent to September 30, 2013, in the amount of \$240,378.8 for which it seeks payment as an administrative claim (“Cogent Claims”). The Trustee objects to the Cogent Claims because any obligations owed to Cogent are owed by TNCI, not the Debtors or their Estates, pursuant to the APA between the Debtors and TNCI. Furthermore, the Cogent Claims do not represent



an expense for actual, necessary, costs of preserving the Debtors' estates, nor could they, as the sale of the Debtors to TNCI had already occurred. Accordingly, there is no basis for an administrative claim against the Debtors' estates, and the Cogent Claims should be disallowed.

### III. OBJECTION

#### A. Any Obligations Owed to Cogent Are Owed by TNCI, Not the Debtors Pursuant to the APA Approved in Connection with the Sale

11. In its Application, Cogent asserts that it is owed no less than \$163,053.53 from the Debtor UniPoint Holdings with respect to a Network Services agreement ("Network Services Agreement"), and is owed no less than \$77,325.29 from Debtor Pac-West with respect to a colocation agreement ("Colocation Agreement"), for a total of \$240,378.82 in Cogent Claims. In the Application, Cogent asserted that the Cogent Claims are entitled to administrative priority, but asserts no basis for entitlement to such administrative priority.

12. As stated, on July 23, 2013, the Court entered the Sale Order [Dckt. No. 446]. Pursuant to the Sale Order, the Court approved the Sale to TNCI. In addition, and important to resolution of the Cogent Claim, the Court also approved the APA. Central to resolution of the Cogent Claim, the APA provides that the Debtors shall "sell, convey, transfer, and assign to [TNCI]" the "Assets" . . . free and clear of all Encumbrances . . . other than . . . other encumbrances." See Ex. A, § 1.1. Furthermore, section 2.1 of the APA, entitled "Liabilities Assumed" provided as follows:

[TNCI] will assume all post-Petition Date accounts payable that relate to the conduct of the Business or any of the Assigned Contracts (collectively, the "Assumed Accounts Payable").

As stated above, Cogent asserts that it provided services to the Debtor UniPoint and the Debtor Pac-West for network and colocation services, respectively. The Petition Date was March 28, 2013. Thus, to the extent services were still provided following the Petition Date by Cogent, amounts owed for such services constitute a post-Petition Date account payable within the

purview of section 2.1 of the APA for the network and colocation services. Accordingly, because the alleged amounts owed to Cogent represent a post-Petition Date account payable, such purported amounts owed to Cogent represent an “Assumed Account Payable” under the APA. *See* APA, § 2.1 As an Assumed Account Payable, alleged amounts due to Cogent constitute a liability of TNCI expressly assumed under § 2.1 of the APA, not of the Debtors’ estates. *See* Ex. 2, § 2.1. The Cogent Claims thus are not a liability of the Debtors pursuant to the plain terms of the APA.

13. Section 2.1 of the APA further expressly set forth those obligations for which the Debtors would remain liable following the sale. To this end, section 2.1 provided that TNCI would not assume any liability related to severance pay, bonus, pension, health or medical benefits, any obligations under any collective bargaining agreement, any employee-related benefit or obligation, any liability or obligation related to any governmental body arising in connection with the Excluded State PUC Authorizations, any liability or obligation resulting from any third party claims or judgments from practices, billings, and charges prior to the Petition Date, or liability with respect to environmental claims to governmental bodies. *See* APA, § 2.1. Obligations allegedly owed to Cogent were *not* included in the list of liabilities to remain with the Debtors. *See* APA, § 2.1.

14. In addition, Schedule 2.1 to the APA expressly provided for the treatment of “Assumed Liabilities.” *See* Ex. 2. Schedule 2.1 set forth that “Ordinary course accounts payable arising after the Petition Date” constituted “Assumed Liabilities.” *See* Ex. 1. As stated, the alleged amounts due the subject of the Cogent Claims were accrued, if at all, after the Petition Date and subsequent to the Sale, as the Application requests payment of amounts for the time period of September 30, 2013 through June 30, 2014.



15. Plainly, the alleged amounts due to Cogent are within the purview of Schedule 2.1 of the APA, and thus represent an Assumed Liability of TNCI. As an Assumed Liability of TNCI, the Debtors' estates are not liable for any amounts owed to Cogent, as they plainly became the liability of TNCI subsequent to the Sale pursuant to the APA. Thus, Cogent's Claims should be disallowed as they are a liability of TNCI.

**B. Cogent's Claim Does Not Represent an Expense for the Actual, Necessary Costs and Expenses of Preserving the Estate**

16. The party claiming that its claim should be entitled to payment as an administrative claim bears the burden of proof. *See, e.g., In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 464 (Bankr. W.D. Tex. 2005). Allowance of administrative claims is governed by § 503(b) of the Bankruptcy Code. Section 503(b) provides a basis for payment as an administrative expense for the "actual, necessary costs and expenses of preserving the estate." *See* 11 U.S.C. § 503(b)(1)(A).

17. The Fifth Circuit has interpreted § 503(b)(1)(A) to mean that "[i]n order to qualify as an 'actual and necessary cost' . . . a claim against the estate must have arisen post-petition and as a result of actions taken by the trustee that benefitted the estate." *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001) (citing *Toma Steel Supply, Inc. v. Transamerican Natural Gas Corp. (In the Matter of Transamerican Natural Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir. 1992) (stating that a "prima facie case under § 503(b)(1) may be established by evidence that (1) the claim arises from a transaction with the debtor-in-possession; and (2) the goods or services supplied enhanced the ability of the debtor-in-possession's business to function.")). In fact, in *Jack/Wade Drilling*, the Fifth Circuit observed that administrative claims under § 503(b)(1)(A) "generally stem from voluntary transactions with third parties who lend goods or services necessary to the successful reorganization of the debtor's estate." *Id.* (citing *Toma Steel Supply*, 978 F.2d at 1415)). Further, the party claiming that its claim should be entitled to payment as

an administrative claim bears the burden of proof. *See, e.g., In re Am. Plumbing & Mech., Inc.*, 323 B.R. 442, 464 (Bankr. W.D. Tex. 2005).

18. Accordingly, Cogent bears the burden to prove that the amounts it asserts are owing in connection with the Agreement represent the actual, necessary costs of preserving the Debtors' estates, consistent with § 503(b)(1)(A) and Fifth Circuit law. Cogent cannot meet its burden of proof because, as set forth herein, pursuant to the Fifth Omnibus Rejection Order, contracts with Cogent were rejected by the Debtors as of the Petition Date. In addition, to the extent that Cogent seeks amounts due related to contracts that were not rejected by the Debtors, Cogent cannot meet its burden of proof under § 503(b). Subsequent to the Sale, particularly subsequent to the closing of the Sale, the Debtors would not have made use of any of the services that Cogent purportedly provided, and such services could not possibly have been for the preservation of the estates, which had already been sold to TNCI.

19. Cogent cannot show that any such services "enhanced the ability of the [Debtors'] business to function" subsequent to the Sale to TNCI. *See Toma Steel Supply, Inc.*, 978 F.2d at 1416. It is not possible that the amounts Cogent asserts are owed were actual, necessary costs of preserving the Debtors' estate, when subsequent to the Sale, the Debtors would not have had a need for such services. Moreover, in its Application, Cogent offers no basis upon which it could attempt to satisfy its burden of proof, and articulates no rationale as to how the Cogent Claims represent the actual, necessary costs and expenses of preserving the estate. In fact, none exists. Cogent cannot satisfy its burden of proof under § 503(b) and thus, the Cogent Claims should be denied.

#### **IV. CONCLUSION**

20. In conclusion, the Application filed by Cogent and the Cogent Claims should be denied in their entirety. As stated herein, the Debtors rejected, as of the Petition Date, certain contracts with Cogent. *See* Fifth Omnibus Rejection Order. To the extent that the Cogent Claims include amounts related to any other agreements with Cogent, such amounts do not constitute the actual, necessary



costs of preserving the estate pursuant to 11 U.S.C. § 503(b). As discussed, subsequent to the Sale, the Debtors would not have made use of any such services, and such services could not have been for the actual, necessary costs of preserving the estates that had already been sold to TNCL. Thus, Cogent cannot meet its burden of proof under § 503(b) to demonstrate that the Cogent Claims for any such services represent the actual, necessary costs and expenses of preserving the estate. Accordingly, the Application and the Cogent Claims should be denied.

WHEREFORE, PREMISES CONSIDERED the Trustee respectfully requests that the Court enter an order denying the Cogent Claims and grant to them all other relief, in law or in equity, to which the Debtors may be entitled.

Dated: September 5, 2014.

Respectfully submitted,

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**COUNSEL FOR LIQUIDATING TRUSTEE OF  
THE UPH LIQUIDATING TRUST**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5th day of September 2014, a true and correct copy of the foregoing was served via the Court's CM/ECF electronic notification system on all parties requesting same.

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\_\_\_\_\_  
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Execution Copy

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**UPH HOLDINGS, INC.,  
PAC-WEST TELECOMM, INC.,  
TEX-LINK COMMUNICATIONS, INC.,  
UNIPOINT HOLDINGS, INC.,  
UNIPOINT ENHANCED SERVICES, INC.,  
UNIPOINT SERVICES, INC.,  
NWIRE, LLC,  
PEERING PARTNERS COMMUNICATIONS, LLC,**

**AND**

**TNCI OPERATING COMPANY LLC**

**JULY \_\_, 2013**

49066/0006-9679207v2

**EXHIBIT 1**

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**EXHIBITA –MANAGEMENT SERVICES AGREEMENT**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "**Agreement**") is made and entered into as of the \_\_\_ day of July, 2013 by and among TNCI Operating Company LLC, a Delaware limited liability company, or its assigns ("**Buyer**"), and UPH Holdings, Inc., a Delaware corporation and debtor-in-possession ("**UPH**") Pac-West Telecomm, Inc., a Delaware corporation and debtor-in-possession ("**Pac-West**"), UniPoint Holdings, Inc., a Delaware corporation and debtor in possession ("**UniPoint Holdings**"), nWire, LLC, a Texas limited liability company and debtor in possession ("**nWire**"), Peering Partners Communications Holdings, LLC, a Texas limited liability company and debtor in possession ("**Peering Partners**"), UniPoint Services, Inc., a Texas corporation and debtor in possession ("**UniPoint Services**"), UniPoint Enhanced Services, Inc., a Texas corporation and debtor in possession ("**UniPoint Enhanced**"), and Tex-Link Communications, a Delaware corporation and debtor in possession ("**Tex-Link**"), (collectively, "**Sellers**").

### RECITALS

WHEREAS, Sellers are engaged in the provision of telecommunications and database services (the "**Business**"); and

WHEREAS, on March 28, 2013 (the "**Petition Date**"), Sellers filed voluntary petitions for relief commencing cases (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Western District of Texas, Austin Division ("**Bankruptcy Court**"); and

WHEREAS, Buyer and Sellers have reached an understanding pursuant to which Buyer shall acquire the Assets (as defined in Section 1.1), which represent substantially all of the assets of the Business other than the Excluded Assets (as defined in Section 1.1), subject to the terms and conditions of this Agreement; and

WHEREAS, each party hereto desires to set forth certain representations and covenants, and to establish certain closing conditions, made to induce the other to execute and deliver this Agreement and to consummate the transactions contemplated hereby, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363 and 365 of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the premises, the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

### ARTICLE 1

#### PURCHASE AND SALE OF ASSETS

1.1 Description of Assets. On each relevant Closing Date (as each term is defined in Article 5 hereof), subject to the terms and conditions set forth in this Agreement,



Sellers shall sell, convey, transfer and assign to Buyer, and Buyer shall purchase and accept from Sellers, any and all right, title and interest in and to all of Seller's tangible and intangible assets of the Business, including but not limited to, those assets set forth below and in Schedule 1.1 (the "**Assets**"; provided, that the Assets will not include the assets described in Section 1.2 below (the "**Excluded Assets**")), free and clear of all Encumbrances (as defined below), other than liens for the payment of Taxes not yet due or payable, and leases, licenses and other encumbrances set forth on Schedule 1.1 (the "**Permitted Encumbrances**"), and of all interests in property as set forth in Section 363 or other portions of the Bankruptcy Code:

(a) prepaid expenses, deferred charges, advance payments and security deposits of Sellers that solely relate to the Business;

(b) all machinery, equipment, vehicles, furniture, fixtures, signs, supplies, accessories, spare parts, tools and other items of tangible personal property owned by Sellers and used solely in the Business, with all assignable executory contracts, licenses, leases, warranty rights and operating manuals and keys relating thereto, all as set forth on Schedule 1.1(b);

(c) except to the extent they fall within the Excluded Assets, Sellers' websites, internet domain names used by the Business, including, to the extent assignable, all rights with respect to internet service providers, third party linking sites and all rights of Seller to owned and/or licensed proprietary, customized and mass market computer software and all computer hardware appropriate for the continued operation of the Business ("**Domain Rights**"), all as set forth on Schedule 1.1(c);

(d) except to the extent they are Excluded Assets: all of Sellers' trademarks, service marks, trade dress, trade names and corporate names and signage, and all the goodwill associated therewith; all of Sellers' registered and unregistered statutory and common law copyrights; all registrations, applications, renewals or common law rights for any of the foregoing; all of Sellers' trade secrets, confidential information, ideas, formulas (whether developed or under development), know-how, manufacturing and production processes and techniques, research information, specifications, designs, plans, improvements, proposals, technical and computer data, to the extent transferable, all of Sellers' license rights with respect to intellectual property of third parties; to the extent transferable, all of Sellers' rights under all confidentiality agreements, non-disclosure agreements, invention assignment agreements and similar agreements executed between Sellers and any employee, consultant or agent of Sellers or any other third party with respect to any intellectual property right of Sellers described in this Section 1.1(d) (together with the Domain Rights, the "**Intellectual Property Rights**");

(e) subject to Section 2.1, all of Sellers' rights under each of the contracts listed on Schedule 1.1(e), which will be delivered and finalized pursuant to Section 2.1 (the "**Assigned Contracts**"), including any Accounts Receivable and Unbilled Revenue Associated therewith;

(f) all Accounts Receivable, Unbilled Revenue and other receivables, as of the Initial Closing Date and arising on or after the Petition Date, and any Accounts



Receivable and Unbilled Revenue generated by Sellers under any Assigned Contract (collectively the "Acquired Accounts Receivable");

(g) all Customer Accounts; provided, however, that the final listing of Customer Accounts and Assigned Contracts with respect to Customer Accounts shall be set forth by Sellers in the appropriate instrument of conveyance delivered at the relevant Closing;

(h) revenue from Sellers' Customer Accounts that accrues after the Initial Closing, subject to and in accordance with the Management Services Agreement;

(i) a list of all Cancelled Accounts, if any;

(j) to the extent used solely in the Business, Sellers' mailing lists, customer lists, brochures and related sales materials and all ad copy, photography and artwork, including materials and documents relating to services, marketing, advertising, promotional activities, trade shows, and all files, supplier lists, records, literature and correspondence (but excluding (i) personnel files for employees of Seller, (ii) such files as may be required to be withheld under applicable law regarding privacy, and (iii) any documents that are not relevant to the Assets), and copies of any and all information and records related to the Customer Accounts that are captured in Sellers' operating support systems in electronic format, and all other documents and materials wherever located that are used in, held for use in or intended to be used in, or that arise out of or relate to, the Business or the Assets;

(k) to the extent assignable, Sellers' telephone numbers (for both voice and data transmission), and used in the Business other than those listed as Excluded Assets;

(l) all records and files pertaining solely to the Business, customers and suppliers, including, without limitation, all supplier, vendor, customer and agency lists, all sales data, correspondence with customers, customer files and account histories, and records of purchases from and correspondence with suppliers, but not including the corporate minute books of Sellers;

(m) Sellers' Operating Company Numbers, Access Customer Name Abbreviations and Carrier Identification Codes;

(n) to the extent transfer is permitted under the Bankruptcy Code or other applicable law, all permits, licenses, certificates, variances, exemptions, orders, approvals, tariffs, rate schedules and similar documents from any Governmental Body (collectively, "*Licenses*") necessary for the lawful ownership of the Assets or other lawful conduct of the business as currently conducted;

(o) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of the seller or with third parties to the extent relating to the Assets, including, without limitation, the Customer Accounts, but excluding any employment agreements containing any such agreements;

(p) all rights, claims, credits, causes of action or rights of set-off against third parties relating to the Assets (including, for the avoidance of doubt, those arising under, or otherwise relating, to the Assigned Contracts), including rights under vendors' and manufacturers' warranties, indemnities and guaranties; provided, however, that nothing in this subsection shall include any claims Sellers may have arising out of or related to any actions commenced by Sellers or any party pursuant to Chapter 5 of the Bankruptcy Code, except for actions arising under section 549 of the Bankruptcy Code with respect to transfers of property that would not otherwise have been Excluded Assets;

(q) any counterclaims, setoffs or defenses that Sellers may have with respect to any liabilities assumed pursuant to Section 2.1; and

(r) Sellers' intangible assets (which may be otherwise described above) used in the operation of the Business, including Sellers' name, and any and all goodwill of Sellers with respect to the Business, and any owned or licensed software.

Notwithstanding anything hereinabove to the contrary, Sellers shall not be obligated to sell, nor shall Buyer be obligated to purchase, any Asset that, at the Closing, Sellers do not own and have the right to sell under the terms of the Sale Order (as defined in Section 3.1(d)) or otherwise. For purposes of this Agreement, "**Accounts Receivable**" shall mean Sellers' gross accounts receivable, notes receivable or other obligations receivable due from third parties, without adjustments for reserves or allowances for doubtful accounts, including, without limitation, CABS receivables arising on or after the Petition Date. "**CABS**" shall mean Sellers' carrier access billing services. "**Cancelled Accounts**" shall mean all cancelled and/or non-active customer accounts that have been terminated within the 12 month period prior to the Initial Closing. "**Customer Accounts**" shall mean the accounts of all of Sellers' active customers and Cancelled Accounts. "**Encumbrances**" shall mean any interest, pledge, lien, mortgage, security interest, judgment, demand, successor liability claim, charge of any kind or nature, tax, assessment, covenant, title defect, encroachment, claim (as and to the full extent that term is defined in Bankruptcy Code Section 101(5) of the Bankruptcy Code), obligation, option or right, whether imposed by agreement, understanding, law, equity or otherwise (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) in or with respect to any assets of Sellers and/or against Sellers, as well as any other interest or burden of any kind. "**Unbilled Revenue**" shall mean the revenue associated with the goods and services provided by Sellers to their customers as of the Initial Closing Date that has not been invoiced or billed to such customers as of the Initial Closing Date. Unbilled Revenue shall include CABS to the extent arising on or after the Petition Date.

1.2 Excluded Assets. Sellers shall not sell, and Buyer shall not purchase, any of the following assets of Sellers:

- (a) all assets and items listed on Schedule 1.2(a);
- (b) all claims, derivative and non-derivative, against Sellers' current and former officers and directors, as well as any and all claims against Sellers' insurance policies



that insure against such claims against the former and current officers and directors and all claims against their former and current auditors, and any right to any proceeds from any such claim, whether from insurance sources or otherwise (collectively, the "**D&O Claims**") and all avoidance and recovery actions under Chapter 5 of the Bankruptcy Code, other than actions arising under section 549 of the Bankruptcy Code with respect to transfers of property that otherwise would not have been Excluded Assets;

(c) all cash on hand, cash on deposit, checks received but not yet deposited or cleared, wire transfers transmitted but not yet received, cash equivalents, certificates of deposit and marketable securities, including interest accrued thereon, held by or on behalf of the Sellers, but excluding advance payments and security deposits related solely to the Assets as provided in Section 1.1(a) of this Agreement;

(d) any rights, claims or causes of action of Sellers against third parties relating to the properties, Business or operations of Sellers arising out of events occurring on or prior to the Closing Date other than any rights, causes of action or defenses of the Sellers against any third party under any Assigned Contract, except for accounts receivable arising before the Petition Date under any Assigned Contract, which accounts receivable are Excluded Assets under Section 1.1(f) of this Agreement;

(e) all Accounts Receivable arising before the Petition Date except Accounts Receivable under any Assigned Contract;

(f) any and all contracts that are not Assigned Contracts ("**Excluded Contracts**") and any and all rights thereunder and prepaid assets related thereto;

(g) any stock or other equity interest in Sellers or other subsidiary of Sellers, and any State PUC Authorizations (as defined in Section 3.9) and FCC Authorizations (as defined in Section 3.9) owned or in the name of nWire, except to the extent that any such State PUC Authorizations and FCC Authorizations are used or useful in the operation Business as currently conducted, in which case such State PUC Authorizations and FCC Authorizations shall instead be deemed Assets assigned to Buyer hereunder to the extent assignable under applicable non-bankruptcy law;

(h) any and all rights of the Sellers under this Agreement and any other ancillary documents entered in connection herewith, and all consideration payable or deliverable to the Sellers pursuant to the terms and provisions hereof and all bank accounts and any right, claims or causes of action of Sellers under this Agreement;

(i) all patents and applications, renewals, registrations, and extensions regarding any patents of Sellers, each as set forth on Schedule 1.2(a) (the "**Excluded Intellectual Property**"), except to the extent that any such Excluded Intellectual Property is used or useful in the operation Business as currently conducted, in which case such Excluded Intellectual Property shall be subject to a perpetual royalty free non-exclusive license from the appropriate Seller to Buyer;



(j) all insurance benefits, including rights and proceeds, insurance premiums, all rights of Sellers relating to claims for refunds, rebates, receivables and rights to offset for any Taxes, including without limitation any prepaid Taxes that relate to taxable periods ending on or before the relevant Closing Date, or any other right to payment, settlement or adjustment of the Sellers from any Governmental Body that relate to Assets or periods ending on or before the relevant Closing Date; and

(k) all state certifications, license, registrations or other authorizations held by Sellers in the states listed on Schedule 1.2(a) (the "**Excluded State PUC Authorizations**").

1.3 **Purchase Price.** The cash consideration to be paid by Buyer at the Closings for the purchase of the Assets will be the sum of \$9,750,000 plus the Cure Amounts, as defined in Section 2.1 hereof (such sum is the "**Purchase Price**"). The Purchase Price shall be allocated among asset classes and descriptions as described on Schedule 1.3. The Purchase Price shall be reduced on a dollar-for-dollar basis by (x) the amount by which the Working Capital Amount as of the Initial Closing is less than One Million Dollars (\$1,000,000.00) (the "**Working Capital Requirement**"). The "**Working Capital Amount**" is the difference between (x) the Acquired Accounts Receivable, *less* (y) the Assumed Accounts Payable (as defined by Section 2.1). At least two business days prior to the Initial Closing, Sellers shall deliver to Buyer a preliminary schedule of the Working Capital Amount consisting of Assumed Accounts Payable and Acquired Accounts Receivable, and a calculation of the Working Capital Amount. At the Initial Closing, Sellers shall deliver a final schedule of the Working Capital Amount. Within seven (7) business days after the Initial Closing Date, Buyer shall prepare and deliver to Sellers a written statement (the "**Final Working Capital Amount Calculation**") setting forth Buyer's good faith calculation of the Working Capital Amount as of the Initial Closing Date. If the Working Capital Amount is less than the Working Capital Requirement, the Final Working Capital Amount Calculation shall contain a recalculation of the Purchase Price. The Sellers shall have the right to review the books and records of the Business and to discuss with Buyer the preparation of the Final Working Capital Amount Calculation, and any objection to such calculation shall be lodged in writing within three (3) business days after receipt thereof. The Buyer and Sellers will negotiate in good faith to resolve within five (5) business days of delivery of a notice of objection the Final Working Capital Calculation. If they are unable to resolve such objection within such time period, either Buyer or Sellers may file a motion with the Bankruptcy Court to rule on the Final Working Capital Calculation and the Working Capital Amount. If no objection is made within such time period, the Final Working Capital Amount calculation shall become final. Once the Working Capital Amount has been determined in accordance with the foregoing procedures, if the Working Capital Amount is less than the Working Capital Requirement (the "**Working Capital Shortfall**"), then the Escrow Amount shall be reduced by an amount equal to the Working Capital Shortfall and such amount shall be wire transferred by the Escrow Agent in immediately available funds to such account as Buyer shall designate.

1.4 **Earnest Money.** As a sign of Buyer's sincere interest in closing the transactions contemplated herein, Buyer will submit a wire transfer to Comerica Bank, for the account of Unipoint Holdings, Inc., Account No. [REDACTED], ABA No. [REDACTED] the



amount of not less than 15% of the Purchase Price (the "*Earnest Money*") within one business day following the execution and delivery of this Agreement by the parties hereto. The Earnest Money will then be immediately transferred to an account of the third party escrow agent selected by the Buyer and Sellers (the "Escrow Agent") promptly upon the establishment of such account. The Earnest Money and all accrued interest thereon will be credited against the Purchase Price to be paid on the Initial Closing Date. If the Initial Closing does not occur for any reason (other than due to a breach of this Agreement by Buyer, in which case the Earnest Money shall be retained by Seller), the Earnest Money and all accrued interest thereon shall be promptly returned to Buyer.

## **ARTICLE 2**

### **ASSUMPTION OF LIABILITIES**

2.1 Liabilities Assumed. Buyer will assume all post-Petition Date accounts payable that relate to the conduct of the Business or any of the Assigned Contracts (collectively, the "Assumed Accounts Payable"). For the avoidance of doubt, such Assumed Accounts Payable shall not include Seller's legal or other professional fees or expenses or any brokerage or other consultant fees or expenses incurred in connection with the transactions contemplated by this Agreement and shall not include any Taxes or Regulatory Fees arising prior to the Petition Date. At least ten business days prior to the Initial Closing Date, Sellers shall deliver to Buyer their proposed Schedule 1.1(e) (Assigned Contracts) to this Agreement. Sellers shall provide appropriate notice to all non-debtor parties to the contracts identified in Schedule 1.1(e) of the possibility that their contracts may be assigned to Buyer, along with the amounts asserted by Sellers as being required to cure any pre-closing monetary default under any such contracts under section 365(b) of the Bankruptcy Code. Such non-debtor parties shall be provided with an opportunity to object, and any objection that cannot be resolved consensually shall be resolved by the Bankruptcy Court. At least five business days prior to the Final Closing Date, Buyer shall notify Sellers which contracts on Sellers' proposed Schedule 1.1(e) that Buyer agrees to accept assignment of, and thereafter Sellers shall finalize Schedule 1.1(e). On or prior to the Final Closing Date, Buyer will execute separate agreements to pay the amounts required to be paid in order to cure any pre-closing monetary default under any Assigned Contract as required under § 365(b) of the Bankruptcy Code (the "*Cure Amounts*"), except, with respect to the Essential Contracts, any amount that exceeds the Cure Cap (as such terms are defined in Section 2.2 hereof), which, pursuant to Section 2.2, shall be the sole responsibility of the Sellers. Buyer shall pay the Cure Amounts directly to the counterparties to such Assigned Contract as agreed by Buyer and the counterparties. Except for the Assigned Contracts, those items specifically set forth on Schedule 2.1, and the Cure Amounts (all of which Buyer shall assume), Buyer does not, and shall not, assume, and Sellers shall remain liable for, any and all liabilities, obligations, claims and commitments of or against Sellers, whether the same are known or unknown, existing, contingent upon future events or circumstances, accrued, funded, unfunded or otherwise, including without limitation:

(a) any liabilities or obligations attributable to any claims arising from or relating to injuries to person or property which either occur prior to the Initial Closing Date, or



occur after the Initial Closing Date and arise from or relate to any act or omission by Sellers prior to the Initial Closing Date (or, in the case of liabilities or obligations attributable to an Assigned Contract occurring prior to the applicable Closing Date for such Assigned Contract, or occurring after the applicable Closing Date with respect to such Assigned Contract and arising from or relating to any act or omission by Sellers prior to such Closing Date);

(b) any liability or obligation resulting from any formal or informal, written or unwritten agreement of Sellers with respect to severance pay, bonus, pension, health or medical benefit, or any other employee benefit or fringe benefit plan;

(c) obligations under any collective bargaining agreement covering any employees of Sellers;

(d) any liability or obligation with respect to any employee, employee benefit or employment obligation of Sellers or the termination thereof, all of which shall be retained as the sole obligation of Sellers;

(e) any liability or obligation to any Governmental Body arising in connection with the Excluded State PUC Authorizations or any services provided by any Seller thereunder;

(f) any liability or obligation resulting from any third party claims or judgments relating to Seller practices, billings, and charges prior to the Petition Date; or

(g) any liability to Governmental Bodies and/or private persons under any Environmental Laws arising from or related to the operations of Seller, or the condition of the Assets at the time of Closing. For purposes of this Agreement, "**Environmental Laws**" means all federal, state or local laws, regulations, statutes, codes, rules, ordinances, resolutions, directives, orders, consent orders or decrees, guidance documents, policy statements, or voluntary cleanup programs of governmental/regulatory agencies, judicial decrees, standards, permits and licenses, or any judicial or administrative interpretation of any of the foregoing, pertaining to the protection of land, water, air, health, or the Environment. "**Environment**" means surface or subsurface soil or strata, surface waters and sediments, navigable waters, groundwater, drinking water supply and ambient air, and also includes indoor air to the extent it is regulated under any Environmental Laws.

2.2 **Essential Contracts.** Schedule 2.2 contains a list of contracts that Sellers have identified as "**Essential Contracts**," along with the corresponding Cure Amounts proposed by Sellers for all such contracts (the "**Cure Cap**"). The Essential Contracts are included in the Assigned Contracts, except that, notwithstanding Section 2.1 hereof, the Essential Contracts shall be assumed by Sellers, and assigned to Buyer, as of the Initial Closing Date. Buyer shall be obligated to pay the actual Cure Amount associated with the Essential Contracts in an amount not to exceed the Cure Cap, and Sellers shall be obligated to satisfy any portion of the actual Cure Amount for all Essential Contracts that exceed the Cure Cap. The actual Cure Amount for each Essential Contract shall be determined by agreement of Buyer, Sellers, and the applicable



contract counterparty or, if the parties do not agree, then by the Bankruptcy Court, on or before the date of the Sale Hearing.

### ARTICLE 3

#### **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby represent and warrant to Buyer as follows:

3.1 Status.

(a) Corporate Existence, Qualification and Power. Each Seller is a corporation or limited liability company duly incorporated or organized, entitled to conduct business and validly existing under the laws of the state of its incorporation or organization. Each Seller is qualified to do business as a foreign corporation or limited liability company in such jurisdictions in which it does business. Sellers have the corporate or limited liability company power to own the assets that they own, lease the assets that they lease and otherwise to conduct the Business as currently conducted.

(b) Authorization.

(i) Sellers have the right, power and authority to enter into this Agreement and, upon receipt of the Sale Order (as defined in Section 6.4(d)), Sellers will have the right, power and authority to consummate the sale of the Assets and the other transactions contemplated by, and otherwise to comply with and perform their obligations under this Agreement;

(ii) Upon receipt of the Sale Order, the execution, delivery and performance by Sellers of this Agreement will have been duly authorized by all necessary corporate action of Sellers in compliance with governing or applicable agreements, instruments or other documents (including, as applicable, its articles of incorporation, bylaws, certificate of formation or limited liability company or operating agreement (as amended)) and applicable law; and

(iii) This Agreement constitutes the valid and binding agreement of Sellers, enforceable against Sellers in accordance with its terms, subject to the receipt of the Sale Order.

(c) Absence of Violations or Conflicts. Except as disclosed in Schedule 3.1(c) and except to the extent that any restrictions or conditions are invalidated by the Bankruptcy Code and/or the Sale Order, the execution and delivery of this Agreement by Sellers and the consummation by Sellers of the sale of the Assets and the other transactions contemplated by, or other compliance with or performance under, this Agreement, do not and will not with the passage of time or giving of notice or both, constitute a violation of, be in conflict with, constitute a default or require any payment under, permit a termination of, require any consent under, or result in the creation or imposition of any Encumbrance or other adverse

claim or interest upon any of the Assets under (i) any contract, agreement or license to which either of Sellers is a party or to which it or any of its respective assets or properties are subject or bound, except for contracts, agreements or licenses requiring consents that have been obtained or will have been obtained as of Closing, (ii) any judgment, decree or order of any Governmental Body to which Sellers or any of their respective properties are subject or bound, (iii) any applicable law, or (iv) any governing or applicable agreements, instruments or other documents, including, as applicable, articles of incorporation, bylaws, articles of organization or limited liability agreements (as amended).

(d) Governmental Permits. Except as set forth in Schedule 3.1(d) and to the Best of Sellers' Knowledge, as of the date of this Agreement: (i) a list of all of the licenses, certificates, approvals, registrations and other permits and authorizations from a Governmental Body (collectively, "**Governmental Permits**") that are held by Sellers has been provided to Buyer; (ii) Sellers are unaware of any written or threatened in writing notice of cancellation or of default concerning any Governmental Permit used in the operation of Sellers' business; (iii) Sellers are unaware of any written or threatened in writing notice of violation, notice of forfeiture, order to show cause or complaint concerning the suspension or revocation, or notice of apparent liability with respect to any Governmental Permit used in the operation of Sellers' Business; and (iv) Sellers are unaware of any written notice of violation, notice of forfeiture, order to show cause or complaint concerning Sellers' compliance with applicable communications laws. For purposes of this Agreement, "**Governmental Body**" shall mean any government, quasi-governmental entity or other governmental or regulatory body or agency, whether foreign, federal, state or local, or any agency, instrumentality, court or authority thereof.

(e) Consents and Approvals. To the Best of Sellers' Knowledge, other than (i) obtaining the Sale Order and (ii) or the consents, approvals, and other authorizations of, and the notices and registrations or other filings to, the FCC and State PUCs set forth on Schedule 3.1(e) (respectively the "**FCC Consents**" and "**State PUC Consents**"), no consent, approval order or authorization of, or registration, declaration or filing with, any court, regulatory authority, or other Governmental Body is required for the execution and delivery of this Agreement or the consummation by Sellers of the transactions contemplated by this Agreement. Pursuant to Section 5(b) of the Bid Procedures Order, Sellers have consulted with the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "**Committee**") and with Hercules before selecting Buyer as a Stalking Horse (as such terms are defined in the Motion referred to in the Bid Procedures Order).

### 3.2 Taxes and Regulatory Fees.

(a) Definitions. For purposes of this Agreement:

(i) The term "**Code**" shall mean the Internal Revenue Code of 1986, as amended. All citations to the Code or to the regulations promulgated thereunder shall include any amendments or any substitute or successor provisions thereto.



(ii) The term "**Returns**" shall mean, collectively, all reports, declarations, estimates, returns, information statements, and similar documents relating to, or required to be filed in respect of, any Taxes (defined below); and (b) any statements, returns, reports, or similar documents required to be filed pursuant to the Code or pursuant to any income, excise, or other tax provision of federal, territorial, state, local, or foreign law; and the term "**Return**" means any one of the foregoing Returns.

(iii) The term "**Taxes**" shall mean (a) all net income, gross income, gross receipts, sales, use, ad valorem, franchise, profits, withholding, employment, payroll, excise, transfer, documentary, mortgage, property, windfall profits, customs, duties, and other taxes, fees, assessments or charges of any kind whatever, together with any interest, penalties and other additions with respect thereto, imposed by any federal, territorial, state, local or foreign government; and (b) any penalties, interest, or other additions to tax for the failure to collect, withhold, or pay over any of the foregoing, or to accurately file any Return; and the term "**Tax**" shall mean any one of the foregoing Taxes. Notwithstanding the foregoing, however, when used with reference to a specified person (for example and without limitation, "**Taxes of Sellers**"), the terms "**Taxes**" and "**Tax**" shall include only those amounts for which Buyer or any affiliate thereof is, or could become, liable in whole or part (including, without limitation, any obligation in connection with a duty to collect, withhold, or pay over any Tax, any obligation to contribute to the payment of any Taxes determined on a consolidated, combined, or unitary basis, any liability as a transferee, or any liability as a result of any express or implied obligation to indemnify or pay the Tax obligations of another person or entity) that remains due and payable by the Buyer from and after the entry of the Sale Order.

(iv) The term "**Regulatory Fees**" shall mean fees and other contributions required pursuant to state or federal telecommunications laws (including without limitation, state and federal universal service support mechanisms, intrastate or interstate telecommunications relay services, administration of the North American Numbering Plan, shared costs of local number portability administration) and regulatory fees imposed by quasi-governmental or non-governmental entities.

(v) The term "**Knowledge**" as applied to any party shall mean the actual knowledge of the current officers of such party. The term "**Best of Sellers' Knowledge**" shall mean the actual knowledge of the current officers of Sellers, after having made due and diligent inquiry of the records of such party and each other relevant person reasonably believed to have actual knowledge of the matters represented

(b) Taxes Secured by Assets. Schedule 3.2(b) sets forth the taxes and claimed taxes that are secured by a first priority lien under applicable non-bankruptcy law. Notwithstanding any other agreement to the contrary, Sellers will create an "**Ad Valorem Tax**



*Reserve*" in the amount set forth on Schedule 3.2(b) from the Purchase Price with which to pay such taxes as and when such claims and amounts are resolved by final order of the Bankruptcy Court; *provided, however*, that if the Ad Valorem Tax reserve proves, for any reason, to be insufficient to fully satisfy any tax claims secured by any of the Assets, the parties holding such tax claims shall nonetheless have no recourse to Buyer or the Assets, which shall in any event be sold free and clear of any such claims pursuant to section 363(f) of the Bankruptcy Code.

(c) Regulatory Fees. Except as set forth in Schedule 3.2(c), there are no pending or, to Sellers' Knowledge, threatened audits, investigations, claims, proposals or assessments for or relating to any Regulatory Fees, whether arising before or after the Petition Date, and there are no matters under discussion with Sellers and any relevant authorities with respect to Regulatory Fees that could reasonably be expected to result in any Regulatory Fees for which Buyer would be liable after the Initial Closing Date other than Regulatory Fees that have accrued in connection with revenue received since the Petition Date for which Buyer is liable pursuant to Section 2.1 of this Agreement.

3.3 Personal Property; Title to Assets. For purposes of this Agreement, "*Property*" or "*Properties*" collectively refers to those tangible personal properties of Sellers that are included among the Assets to be sold to Buyer. Schedule 3.3 lists all of the Properties according to the Sellers' books and records with a value of greater than \$5,000 used in or necessary for the operation of the Business. With the exception of any dispositions by Sellers in the ordinary course of business (as detailed in a supplemental disclosure schedule to Buyer), Schedule 3.3 remains true, correct and complete as of the date hereof Sellers have good title to all of the Properties owned by it as indicated on Schedule 3.3; and (ii) none of the Properties is subject to any lien, claim or other encumbrance that will not be removed pursuant to the Sale Order except liens for taxes not yet due and payable. Sellers will, upon the entry of the Sale Order and the consummation of the transactions contemplated hereby, transfer, and the Buyer will obtain all right, title and interest in and to, the Assets free and clear of any and all Encumbrances other than the liabilities assumed under Section 2.1.

3.4 Intellectual Property Rights.

(a) Schedule 3.4 contains a complete and accurate list of (i) all trade or corporate names used by Sellers in the Business; (ii) all Business-related computer software owned by Seller; (iii) all licenses and other rights granted by Sellers to any third party with respect to Business-related computer software rights; and (iv) all licenses and other rights granted by any third party to Sellers with respect to Business-related computer software rights, together with a description of the subject matter licensed.

(b) Except as set forth on Schedule 3.4, (i) one or more of the Sellers are the registered owner, senior or priority user, or otherwise has superior rights in and to, or has valid, enforceable and effective written licenses to use, all of the Intellectual Property Rights listed in Schedule 3.4; (ii) during the two (2) years preceding the date of this Agreement, no claim by any third party contesting the validity, enforceability, use or ownership of any Intellectual Property Rights owned or used by Sellers have been made or, to the Sellers' Knowledge, threatened and no such claim is currently outstanding; (iii) during the two (2) years



preceding the date of this Agreement, to Sellers' Knowledge, Sellers have not received any notice of, and is not aware of any facts which indicate a likelihood of, any infringement or misappropriation by any third party with respect to the Intellectual Property Rights of Sellers, nor to Sellers' Knowledge have Sellers received any claim alleging infringement or misappropriation of any Intellectual Property Rights of any third party; (iv) to Sellers' Knowledge, Sellers have not infringed, misappropriated or otherwise conflicted with any Intellectual Property Rights of any third party, nor are Sellers aware of any infringement, misappropriation or conflict which will occur as a result of the continued operation of the Business as conducted or as currently proposed to be conducted; and (v) the Intellectual Property Rights listed in Schedule 3.4 constitute all of the intellectual property rights related to, used or held for use in, necessary to the operation of the Business.

(c) To Sellers' Knowledge, neither Sellers nor any employee or agent of Sellers nor any other person or entity, directly or indirectly, (i) has disclosed any of Sellers' trade secrets, formulas, product specifications, manufacturing and production processes and techniques or other confidential information of Sellers (collectively, the "*Information*") to any other person or entity, except in the ordinary course of business (as conducted before, during or after the filing of the Chapter 11 Cases) or to the Committee or potential purchasers of the assets of Sellers in connection with such purchasers' due diligence investigation of Sellers in accordance with appropriate confidentiality agreements, or (ii) has used the Information for any purpose other than in connection with the performance of such person's duties to Sellers. Sellers take reasonable precautions with their employees and others to protect their Intellectual Property Rights and are unaware of any third party with access to Information having used the Information for its own purposes or for any purpose other than in connection with the Business.

3.5 Litigation; Insurance. Except for the Chapter 11 Cases and all claims filed against Sellers therein, or as disclosed in Schedule 3.5, Sellers are not (i) engaged in, a party to, subject to or, to the Best of Sellers' Knowledge, threatened with any claim, legal or equitable action, or other proceeding (whether as plaintiff, defendant or otherwise and regardless of the forum or the nature of the opposing party); (ii) to Sellers' Knowledge, subject to any unasserted claim, the assertion of which is likely and which, if asserted, will seek damages, an injunction or other relief against Sellers which claim would have a material adverse effect on the Assets or the operation of the Business; or (iii) a party to or subject to any judgment, order or decree against Sellers or Sellers' assets. Any claims, litigation or other proceeding listed on Schedule 3.5 and involving injury to persons or property, including any product liability claim, is covered by the insurance described on Schedule 3.5, which description includes a summary of the kind of policy covering such matter and its policy limits. Except as set forth in Schedule 3.5, there has been no reservation of rights by any insurance carrier, and no such reservation is threatened, concerning the coverage of Sellers with respect to any matter required to be disclosed pursuant to this Section 3.5.

3.6 Accounts Receivable. All of Sellers' accounts receivable arising under the Assigned Contracts are valid and enforceable claims (Sellers make no representation or warranty regarding the collectability of any such accounts receivable); the goods and services sold and delivered which gave rise to such accounts were sold and delivered in conformity in all material



respects with the applicable purchase orders, agreements and specifications. From and after the date occurring ninety (90) days prior to the Petition Date, Sellers have made no change in policies or practices with respect to the payment of accounts payable or accrued expenses or the collection of accounts receivable or other receivables, including any acceleration or deferral of the payment or collection thereof, as applicable, in each case, other than in the ordinary course of business. To the Best of Sellers' Knowledge, there are no rights of set-off or claims against such accounts receivable possessed by the account debtors of Sellers.

3.7 Financial Statements. Sellers shall furnish to Buyer copies of the reviewed but unaudited consolidated balance sheet of Sellers as of December 31, 2012, and the related consolidated statement of income and retained earnings and statement of cash flows for the period beginning January 1, 2012, and ending on December 31, 2012 (the "**2012 Financial Statements**"), plus monthly financial statements thru May 2013 (the "**2013 Financial Statements**"). Except as set forth in Schedule 3.7, to the Best of Seller's Knowledge, (a) the 2013 Financial Statements present fairly, in all material respects, the financial position of Sellers as of such dates, and the results of operations and cash flows for the periods presented therein.

3.8 Deposits and Prepayments. Except as set forth in Schedule 3.8, there are no deposits, prepayments for services or other prepaid items of Sellers.

3.9 FCC and State PUC Authorizations. Schedule 3.9 sets forth all governmental licenses other authorizations (the "**FCC Authorizations**") issued or granted by the Federal Communications Commission ("**FCC**") held by Sellers, and all governmental certificates, licenses, registrations, and other authorizations issued or granted by any of the state public utility commissions, agencies, boards or other similar Governmental Bodies ("**State PUCs**") of the states in which Sellers conduct the Business (the "**State PUC Authorizations**") held by the Sellers. Except as set forth in Schedule 3.9, such FCC Authorizations or State PUC Authorizations are validly held and in full force and effect, and there is no outstanding notice of cancellation, termination, or non-renewal or, to the Knowledge of Sellers, any threatened cancellation, termination, or non-renewal with respect thereto. None of the Sellers provide material intrastate telecommunications services in any state other than a state where such Seller holds a State PUC Authorization where such authorization is required and no Seller provides any material service pursuant to any Excluded State PUC Authorization where such authorization is required.

(a) Except as set forth in Schedule 3.9(a), Sellers (i) are not subject to any restrictions or conditions applicable to its FCC Authorizations or State PUC Authorizations that materially limit the operations of the Business (other than restrictions or conditions generally applicable to FCC authorizations and State PUC authorizations of that type); (ii) are not in violation of or noncompliance with the terms and conditions of any such FCC Authorization or State PUC Authorization, except for possible violations or noncompliance that in the aggregate have not resulted and would not reasonably be expected to result in a material adverse effect; and (iii) are not in violation of or noncompliance with any material law applicable to the Business, except for possible violations or noncompliance that in the aggregate have not resulted and would not reasonably be expected to result in a material adverse effect.



(b) Except as set forth in Schedule 3.9(b), there are no applications by Sellers, nor, to the Best of Sellers' Knowledge, any complaints or petitions, or other filings by others, or proceedings pending or threatened, before the applicable regulatory authorities relating to Sellers or the FCC Authorizations or State PUC Authorizations.

(c) Except as set forth in Schedule 3.9(c), Sellers have made all reports, and paid all contributions and fees (including with respect to universal service support), required by any law applicable to the Business, except for the failure to file such reports or pay such fees that in the aggregate have not resulted and would not reasonably be expected to result in a material adverse effect.

3.10 Leases. Schedule 3.10 sets forth a true, correct and complete list and description of all leases, subleases, licenses and other occupancy or lease agreements, together with all amendments, supplements and nondisturbance agreements pertaining thereto, under which Sellers lease, sublease, license, occupy or use any real or personal property other than Intellectual Property (the "Leases"). Schedule 3.10 also lists the term of such leases, subleases, or licenses, any extension and expansion options, and the rent payable thereunder. To Sellers' Knowledge, as of the date hereof, there are no disputes, oral agreements or forbearance programs in effect as to any of the Leases and Sellers have not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in any leasehold or subleasehold. Sellers have provided Buyer with true, correct and complete copies of all such Leases. As of the date hereof, other than the Leases, there are no agreements, contracts and commitments, whether written or oral, by which any of the assets, properties or the Business is bound.

3.11 Employment Matters; Employee Benefits.

(a) Other than as set forth in Schedule 3.11(a) there are no employment or consulting contracts or arrangements, including pensions, bonus or profit sharing plans, or other severance or termination contracts or arrangements which constitute contractual obligations of Seller.

(b) Sellers have complied with and shall comply with (to the extent required under the Bankruptcy Code) all of Sellers' obligations with respect to their employees and employment related contracts, including, without limitation, Sellers' Employee Benefit Plans. Buyer shall have no obligations with respect to any of the same.

3.12 Compliance with Laws. Except as set forth in Schedule 3.12, Sellers have complied with all laws applicable to the Business in all material respects, as presently conducted, including, without limitation, (a) all environmental laws, and (b) all provisions of laws relating to labor relations, equal employment practices, fair employment practices, entitlement, prohibited discrimination, terms and conditions of employment, wages and hours, or other similar employment practices or acts. Sellers have not received any notice from or otherwise been advised that any Governmental Body or other person is claiming any violation or potential violation of any law. Other than with respect to the Chapter 11 Cases, no claim has been made by any Governmental Body to the effect that the Business, as conducted by Sellers, fail to



comply, in any respect (and no such claim is anticipated by Sellers), with any law, rule, regulation, or ordinance.

3.13 Brokers, Finders, etc. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the intervention of any person acting on behalf of Sellers in such manner as to give rise to any claim against Buyer for any brokerage or finders' commission or similar compensation. Other than Q Advisors and each other party set forth on Schedule 3.13, no person or entity is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by Sellers in connection with the transactions contemplated by this Agreement.

3.14 Books and Records. Sellers have made and kept (and given Buyer access to) Sellers' book and records, which, in reasonable detail, accurately and fairly reflect the activities and transactions of Sellers, the dispositions of assets related to the Business, and the financial condition of Sellers, including, without limitation, the existence of any and all liabilities, whether actual or contingent.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE IN THIS AGREEMENT, THE ASSETS WILL BE CONVEYED "AS-IS" "WHERE IS" AND WITH ALL FAULTS. SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE ASSETS OR ANY OTHER MATTER EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR TYPE WHATSOEVER, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED BY SELLER INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### ARTICLE 4

##### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

4.1 Status of Buyer.

(a) Corporate Existence and Status. Buyer is a limited liability company duly organized, entitled to conduct business and validly existing under the laws of the State of Delaware.

(b) Authorization.

(i) Buyer has the right, power and authority to enter into this Agreement and to consummate the purchase of the Assets and the other transactions contemplated by, and otherwise to comply with and perform its obligations under, this Agreement;

(ii) The execution and delivery by Buyer of this Agreement, and the consummation by Buyer of the purchase of the Assets and the other transactions contemplated by, and other compliance with and performance of its obligations under this Agreement have been duly authorized by all necessary limited liability company action on the part of Buyer in compliance with governing or applicable agreements, instruments or other documents (including its certificate of formation and operating agreement (as amended)) and applicable law; and

(iii) This Agreement constitutes the valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms.

(c) Absence of Violations or Conflicts. To Buyer's Knowledge, the execution and delivery of this Agreement and the consummation by Buyer of the purchase of the Assets and the other transactions contemplated by, or other compliance with or performance under, this Agreement do not and will not with the passage of time or giving of notice or both, constitute a violation of, be in conflict with, or require any consent under, (i) any contract, agreement or license to which Buyer is a party or to which it or any of its assets or properties are subject or bound, (ii) any judgment, decree or order of any Governmental Body to which Buyer or any of its properties are subject or bound, (iii) any governing or applicable agreements, instruments or other documents, including its certificate of formation and operating agreement (as amended), or (iv) except with respect to the FCC Consents and the State PUC Consents, any applicable law.

4.2 Consents and Approvals. Except with respect to the obtaining of (a) the Sale Order and (b) the FCC Consents and the State PUC Consents, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Body on the part of Buyer is required in connection with its execution or delivery of this Agreement or the consummation of the purchase of the Assets and the other transactions contemplated by, or other compliance with or performance under, this Agreement by Buyer.

4.3 Brokers, Finders, etc. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the intervention of any person acting on behalf of Buyer in such manner as to give rise to any claim against Sellers for any brokerage or finders' commission or similar compensation.

4.4 Purchase Price. Buyer has sufficient cash in immediately available funds to pay the Purchase Price and to consummate the transactions hereunder.

## ARTICLE 5

### CLOSINGS AND CLOSING DATES

5.1 The Closings and the Closing Dates. The closings of the sale of Assets and other transactions contemplated by this Agreement (the "*Closings*") shall take place at the



office of Jackson Walker L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas 78701, commencing at 9:00 a.m. local time on the dates ("**Closing Dates**"), as follows:

(a) Initial Closing.

(i) The initial closing (the "**Initial Closing**") shall occur within seven (7) Business Days following the date upon which the conditions to Closing set forth in Article 9 and Article 10 (excepting only the conditions set forth in Section 9.9 (Interim Closing and Final Closing Conditions)) shall have been satisfied or waived (the "**Initial Closing Date**"), unless such date is extended by agreement of the parties hereto.

(ii) At the Initial Closing:

- (A) Buyer shall deposit with Escrow Agent the balance of the Purchase Price (together with the Earnest Money and all accrued interest thereon, collectively, the "**Escrow Amount**") to be released by Escrow Agent to Sellers in installments at the Closings in accordance with the terms of this Agreement;
- (B) Sellers shall sell, and Buyer shall purchase, the Initial Assets, free and clear of all Encumbrances, and Buyer shall assume at the Initial Closing any liabilities contemplated under Section 2.1 except to the extent that any Assigned Contract is not assigned at the Initial Closing;
- (C) Sellers and Buyer shall deliver to the Escrow Agent joint written instruction to transfer to Sellers, by wire transfer of immediately available funds from the Escrow Amount to a bank account designated by Sellers, an amount equal to the sum of the Purchase Price multiplied by the Release Ratio;
- (D) Buyer shall pay any Regulatory Payment then due and payable; and
- (E) The balance of the Escrow Amount shall be retained by the Escrow Agent and applied in accordance with the terms of this Agreement.

For purposes of this Agreement, "**Approved States**" shall mean any and all states of the United States in which the Business is operated and with respect to which (a) either Regulatory Approval has been obtained or no consent, waiver, approval, order, communications license, or authorization of the applicable State PUC is required by applicable law for the execution or consummation of this Agreement is required, and (b) Buyer has received all licenses and approvals for operation of the Business, if any, required by the applicable State PUC. "**Initial Assets**" shall mean: (a) those Assigned Contracts along with any and all other Assets associated with operations in Approved States, (b) Sellers' Accounts Receivable associated with such operations as of the Initial Closing, and (c) all other Assets that may be transferred to Buyer

without Regulatory Approval and that are designated by Buyer for transfer at the Initial Closing. "**Regulatory Approval**" shall mean any consent, waiver, approval, order, communications license, or authorization of the FCC or any of the State PUCs required by applicable law for the execution or consummation of this Agreement. "**Regulatory Payments**" shall mean the amounts necessary to satisfy any asserted regulatory fees, assessments, fines, penalties or other payments assessed by the FCC, any State PUC, and the Universal Service Administrative Company, based upon Sellers' revenues or Sellers' conduct of the Business or any of the Assigned Contracts first arising prior to the Final Closing Date but after the Petition Date. "**Release Ratio**" shall mean (a) with respect to the Initial Closing, 80% of the Purchase Price and (b) as to the remaining 20% of the Purchase Price or any remaining portion thereof (the "Remaining Purchase Price"), in the case of any Interim Closing, the percentage obtained by dividing (i) the monthly revenue for the full month preceding such Interim Closing, generated by the Assigned Contracts that have not been previously assigned to Buyer for those states as to which Regulatory Approval has been obtained since the Initial Closing or the prior Interim Closing, as the case may be, by (ii) the monthly revenue for the full month preceding such Interim Closing for all of the Assigned Contracts not previously assigned to the Buyer.

(b) Interim Closing(s). Approximately every forty-five (45) days after the Initial Closing or as otherwise mutually agreed to by the parties (each, an "**Interim Closing**"): (i) Seller shall sell, and Buyer shall purchase, the Assigned Contracts and other Assets for those states that have become Approved States since the last Closing (either Initial or Interim, as applicable), free and clear of all Encumbrances, and Buyer shall assume any liabilities contemplated under Section 2.1 that are associated solely with such Assigned Contracts and Assets; and (ii) the Escrow Agent shall pay to Seller from the Escrow Amount and by wire transfer of immediately available funds to a bank account designated by Seller, an amount equal to the remaining Purchase Price multiplied by the applicable Release Ratio.

(c) Final Closing.

(i) The final closing of the transactions contemplated in this Agreement (the "**Final Closing**") shall take place on the earlier to occur of (1) the 180th day following the Initial Closing Date, or (2) the second business day following the date on which all Regulatory Approvals from State PUCs have been obtained by Buyer (the "**Final Closing Date**").

(ii) At the Final Closing:

- (A) Sellers shall sell, and Buyer shall purchase, the remaining Assets, free and clear of all Encumbrances, and Buyer shall assume any liabilities contemplated under Section 2.1 that are associated with Assigned Contracts assigned at the Final Closing but not previously assumed and assigned; and
- (B) the Escrow Agent shall pay to Sellers, by wire transfer of immediately available funds to a bank account designated by Sellers, the sum of: (1) the balance of the Escrow Amount plus (2)



any interest accrued on the foregoing minus (3) any Purchase Price adjustment required under Section 1.3.

(iii) From and after the Final Closing, Buyer shall be entitled to retain one hundred percent (100%) of net profits for any ongoing operations in states where any Regulatory Approvals have not been obtained as of the Final Closing.

(d) The Assets shall remain the property of Sellers, and any risk of loss thereof, through the date immediately prior to the respective Closing Date at which such Assets are sold or conveyed to Buyer, and thereafter shall be the property of Buyer with the risk of loss thereof allocated to the Buyer. Except to the extent otherwise set forth in this Agreement, the liabilities contemplated to be assumed under Section 2.1 that are associated solely with associated with such Assets shall remain the responsibility of Seller through the date immediately prior to the Closing Date at which such liabilities are transferred to Buyer, and thereafter shall be the responsibility of Buyer.

## 5.2 Conveyances at Closings.

(a) At each Closing, and in connection with effecting and consummating the transactions contemplated hereby, Sellers shall deliver the following to Buyer, if applicable:

(i) an executed Bill of Sale, in form and substance satisfactory to the Buyer and Sellers, identifying the portion of the Assets being sold, assigned or transferred at such Closing;

(ii) if applicable, an executed counterpart of an Assumption and Assignment Agreement, in form and substance satisfactory to the Buyer and Sellers, with respect to the Assigned Contracts to be assumed and assigned at such Closing;

(iii) such other instruments as shall be reasonably requested by Buyer to vest in Buyer title in and to the portion of the Assets being sold, assigned or transferred at such Closing in accordance with the provisions hereof and the Sale Order;

(iv) at the Initial Closing only:

(A) an executed escrow release letter directing the Escrow Agent to release the Earnest Money and all accrued interest thereon to Sellers for credit against the portion of the Purchase Price payable on the Initial Closing Date in accordance with Section 1.4 and any additional amounts from the Escrow Amount necessary to pay that portion of the Purchase Price due on the Initial Closing Date; and

(B) an executed Management Services Agreement in the form attached hereto as Exhibit A (the "*Management Services Agreement*") and an executed Escrow Agreement in form and substance acceptable to Buyer, Sellers and Escrow Agent (the "*Escrow Agreement*").

(v) at each Interim Closing only, an executed escrow release letter directing the Escrow Agent to release to Sellers the portion of the Escrow Amount payable at each Interim Closing in accordance with Section 5.1(b).

(vi) at the Final Closing only, an executed escrow release letter directing the Escrow Agent to release the Escrow Amount to Sellers in accordance with Section 5.1(c).

(b) In connection with effectuating and consummating the transactions contemplated hereby:

(i) at the Initial Closing only, Buyer shall deliver:

(A) a certified copy of the Sale Order;

(B) to Sellers an executed Management Services Agreement and an executed Escrow Agreement in form and substance acceptable to Buyer, Sellers and Escrow Agent;

(C) to Escrow Agent, an executed escrow release letter directing the Escrow Agent to release the Earnest Money and all accrued interest thereon to Sellers for credit against the portion of the Purchase Price payable on the Initial Closing Date in accordance with Section 1.4 and any additional amounts from the Escrow Amount necessary to pay that portion of the Purchase Price due on the Initial Closing Date; and

(D) to Escrow Agent, the Escrow Amount, by wire transfer of immediately available funds, to be held pursuant to the Escrow Agreement and paid to Sellers in accordance with the terms of this Agreement.

(ii) at each Interim Closing only, Buyer shall deliver an executed escrow release letter directing the Escrow Agent to release to Sellers the portion of the Escrow Amount payable at each Interim Closing in accordance with Section 5.1(b).

(iii) at the Final Closing only, Buyer shall deliver to Escrow Agent, an executed escrow release letter directing the Escrow Agent to release to Sellers the Escrow Amount in accordance with Section 5.1(c).



To the extent that a form of any document to be delivered under this Agreement is not attached as an exhibit, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Buyer and Sellers.

5.3 Other Closing Matters. Each of the parties shall use their reasonable efforts to take such other actions required hereby to be performed by it prior to or on each Closing Date.

## ARTICLE 6

### COVENANTS OF SELLER

6.1 Conduct of Business by Seller Pending the Closing. At all times prior to the Final Closing Date, Sellers shall conduct the Business in the usual and ordinary course and in accordance with their obligations as debtors-in-possession under the Bankruptcy Code. Except as otherwise contemplated under this Agreement or ordered by the Bankruptcy Court, from the date hereof until the Final Closing Date, without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed, Sellers shall (x) refrain from selling, assigning, licensing, leasing, transferring or otherwise disposing of, in whole or in part, any of the Assets, except for sales made in the ordinary course of business, and (y) make no change in policies or practices with respect to the payment of accounts payable or accrued expenses or the collection of accounts receivable or other receivables, including any acceleration or deferral of the payment or collection thereof, as applicable, in each case, other than in the ordinary course of business.

6.2 Affirmative Covenants. Subject to any conflicting obligation imposed on Seller as a debtor-in-possession under the Bankruptcy Code, from the date hereof to the Final Closing Date, Seller shall:

(a) Use its good faith commercially reasonable efforts to operate the Business in the usual and ordinary course of business (and in substantially the same manner as the Business had been conducted prior to filing of the Chapter 11 Cases), including normal markdown practices and order fulfillment;

(b) Undertake to maintain property and liability insurance in appropriate amounts of coverage with respect to the Assets;

(c) Maintain, consistent with past practice (prior to filing of Sellers' Chapter 11 Cases), the Assets in good repair, order and condition, reasonable wear and tear excepted, and use commercially reasonable efforts to preserve its possession and control of all of the Assets;

(d) Allow, at all reasonable times up to and including the Final Closing Date, Buyer's employees, attorneys, auditors, accountants and other authorized representatives, reasonable access to the facilities, plants, properties, books, records, documents

and correspondence of Sellers, in order that Buyer may conduct such investigation as it may desire of the Business;

(e) Use commercially reasonable efforts (i) to comply in all material respects with all applicable laws relating to the conduct of the Business, and (ii) to conduct the Business to the Final Closing Date in such a manner that on the Final Closing Date the representations and warranties contained in this Agreement shall be true as though such representations and warranties were made on and as of such date, except for changes permitted or contemplated by the terms of this Agreement; and

(f) Sellers shall not change recurring or non-recurring rates or sales strategies or collections processes for the Assets prior to the Initial Closing without the prior written consent of Buyer, in its commercially reasonable discretion.

6.3 Consents and Closing Conditions. Sellers shall use commercially reasonable efforts to take such actions as may be appropriate in order to fulfill the closing conditions contained herein which are reasonably within their control.

6.4 Bankruptcy Court Approvals.

(c) Sale Pleadings. Sellers have previously filed with the Bankruptcy Court a motion [Doc. No. 255] requesting, among other things: (i) an order approving of the Bid Procedures (as hereafter defined), and (ii) ultimately approving the sale of the Assets conducted pursuant to the Bid Procedures (the "**Motion**"). A hearing on the Bid Procedures portion of the Motion was held on June 27, 2013 (the "**Bid Procedures Hearing**") and a hearing on the Sale Motion is scheduled for July 22, 2013 (the "**Sale Hearing**").

(d) Bid Procedures. As used herein, the term "**Bid Procedures**" refers to the bid procedures approved in the Order approving the Bid Procedures [Doc. No. 280] (the "**Bid Procedures Order**").

(i) Termination Fee. Consistent with the Bid Procedures Order, the Buyer shall be entitled to a termination fee in the amount of \$292,500 (the "**Termination Fee**") upon the occurrence of an Alternative Transaction (as defined in the Bid Procedures Order). The parties hereto each hereby acknowledge and agree that Buyer has incurred substantial costs and expenses relating to this transaction, including without limitation, the costs and expenses associated with the performance of due diligence of Sellers, the negotiation and execution of this Agreement (and the exhibits and schedules related thereto) and the documents which preceded this Agreement, and has undertaken substantial risk as a result of incurring such costs and expenses. Consistent with the Bid Procedures Order, the Termination Fee shall be paid without the need for any further Order of the Bankruptcy Court, from the proceeds of the first scheduled closing of any Alternative Transaction and, if applicable, from the proceeds of each subsequent closing until paid in full; *provided, however*, that if the Alternative Transaction is a plan of reorganization, then the Termination Fee shall be paid upon the effective date of such plan. The procedures applicable to the auction of the Assets (the "**Auction**") shall be as set forth in the Bid Procedures Order.



(ii) At the Auction, Sellers will take the Termination Fee into account when considering which offer constitutes the highest and best offer for the Assets. In addition, at the Auction, Sellers will consider the impact upon the estate of contracts assumed by Buyer in determining the highest and best offer.

(e) Entry of Orders. The Sale Order shall have been entered by the Bankruptcy Court on or before July 31, 2013.

(f) Sale Order. For the purposes of this Agreement, "**Sale Order**" shall refer to an order, in form and substance satisfactory to Buyer in its reasonable discretion, which shall, among other things: (i) find that the Buyer has acted in good faith and is therefore entitled to the protections of Section 363(m) of the Bankruptcy Code; (ii) acknowledge that the sale is a valid exercise of Sellers' business judgment; (iii) authorizing and approving, to the fullest extent permitted under Sections 105, 363(b) and 363(f) of the Bankruptcy Code, the sale of the Assets free and clear of any Encumbrances and declaring that Buyer has no liability and no successor liability with respect to the Assets, other than with respect to the liabilities assumed under Section 2.1, and only to the extent provided in this Agreement; (iv) declaring that, pursuant to Bankruptcy Rules 6006(d) and 6004(g), the Sale Order shall not be stayed but shall be effective immediately; (v) ratifying the sale process and Bid Procedures; (vi) authorizing and approving the assumption and assignment of the Assigned Contracts free and clear of any Encumbrance to the fullest extent permitted under Section 365 of the Bankruptcy Code, except for Buyer's obligations as assignee of Seller under the Assigned Contracts and this Agreement; (vii) approving the Management Services Agreement; and (viii) directing the Sellers to execute, upon request by Buyer, one or more assignments in form, substance, and number reasonably acceptable to Buyer, evidencing the conveyance of the Assets to Buyer.

## ARTICLE 7

### COVENANTS OF BUYER

7.1 Consents and Closing Conditions. Buyer shall use commercially reasonable efforts to obtain such consents from third parties and to take other actions as may be required in order to fulfill the closing conditions contained herein which are reasonably within its control including but not limited to (a) within a reasonable time period after Buyer becomes eligible for the Termination Fee, filing for and prosecuting Regulatory Approval before any state or federal agency that does not require the entry of the Sale Order to commence any relevant notice or approval period, (b) within a reasonable time period after entry of the Sale Order, filing for and prosecuting Regulatory Approval with every other state or federal agency in which Regulatory Approval is required; and (c) to cause the representations and warranties of Buyer in Article 4 to be true and correct on and as of the each Closing Date.

7.2 Access to Records. After the Initial Closing Date and upon reasonable prior notice to Buyer, Buyer shall permit Sellers, the Committee or any successor of the Sellers, including without limitation any liquidating trustee or plan administrator appointed under a chapter 11 plan for any or all of the Sellers, at such party's expense during normal business



hours, to have reasonable access to such of the former business records of Sellers as are from time to time then retained by Buyer.

7.3 Claims Retained by Sellers. All claims described in Section 1.2(a) above remain with Sellers, its creditors and shareholders and such claims, if pursued, will be pursued for the exclusive benefit of the creditors of Sellers and the proceeds from the pursuit of any such claim shall be payable to the creditors of Sellers, regardless of who pursues such claims. Buyer shall have no right to pursue any such claim or to seek any of the proceeds derived therefrom.

## ARTICLE 8

### TAX MATTERS

8.1 Cooperation and Records Retention. From time to time, Sellers and Buyer shall permit reasonable access, and shall cause their respective accountants and other representatives to permit reasonable access by each other, to the information that they or their accountants or other representatives have within their control and that may be reasonably necessary in connection with the preparation of any Return or the examination by any taxing authority or other administrative or judicial proceeding relating to any Return. Sellers and Buyer shall retain or cause to be retained, until the applicable statutes of limitations (including any extensions) have expired (or sooner if authorized by an order of the Bankruptcy Court and Sellers first provides Buyer with reasonable notice of the information to be destroyed and a reasonable opportunity to take possession of such information if Buyer so elects), copies of all Returns for all tax periods beginning before the Closing Date, together with supporting work schedules and other records or information that may be relevant to such Returns.

8.2 Tax Elections and Permits. No new elections with respect to Taxes, or any changes in current elections with respect to Taxes, affecting the Assets shall be made by Sellers after the date of this Agreement without the prior written consent of Buyer.

8.3 Sales and Transfer Taxes. Seller shall bear the responsibility for payment of Taxes in the event that any sales transfer or similar Tax is imposed against Sellers or Buyer as a result of the transactions contemplated hereby. Sellers shall take any and all actions, at Buyer's expense, and only to the extent that such actions will not have a material adverse impact on Sellers or Sellers' Tax liability, that Buyer may reasonably request in order to minimize Buyer's tax obligations resulting from the transactions contemplated hereby.

8.4 Property Taxes. Property Taxes on the Assets for calendar year 2013 will be pro-rated between Buyer and Sellers as of the Closing Date.



## ARTICLE 9

### **BUYER'S CONDITIONS TO CLOSING**

The obligation of Buyer to consummate the purchase of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment to Buyer's reasonable satisfaction of each of the following conditions:

9.1 Ordinary Course Operations. The Business shall have been operated in the ordinary course of business through each Closing, consistent with past practices (as the Business has been conducted prior to filing the Chapter 11 Cases and in accordance with Sellers' obligations under Sections 6.1 and 6.2 hereof), with no increases in compensation and no distributions, dividends or changes in related party transactions.

9.2 Accuracy of Representations and Warranties. All representations and warranties of Sellers contained in this Agreement or in any document delivered pursuant hereto shall be true and correct in all material respects when made, and on and as of each Closing as though made on and as of such Closing, subject to Sellers' right to update and amend the Schedules hereto at any time before Closing with any material changes subject to the prior written consent of Buyer, in its sole discretion.

9.3 Performance of Covenants. All covenants, agreements and obligations required by the terms of this Agreement to be performed, satisfied or complied with by Sellers at or before each Closing shall have been duly and properly performed in all material respects.

9.4 Closing Documents. Sellers shall have delivered all documents required to be delivered by it at Closing, as more specifically set forth in Article 5, in each case in form and substance satisfactory to Buyer.

9.5 No Changes. There have been no material adverse changes to the Assets, normal wear and tear and insured loss excepted, between the date of this Agreement and the date of the relevant Closing with respect thereto.

9.6 Approval of Bankruptcy Court. The Bankruptcy Court shall have entered the Sale Order.

9.7 Approval of FCC. The FCC Consents shall have been obtained.

9.8 Regulatory Fees. The Sale Order shall provide that Buyer will have no liability for any Regulatory Fees arising prior to the Petition Date, including, without limitation, any liability to the Universal Services Administration Company for such fees.

9.9 Interim Closing and Final Closing Conditions. The obligations of Buyer to consummate the transactions to occur at the Interim Closing(s) and at the Final Closing are subject to the fulfillment, on or prior to the Interim Closing(s) and/or the Final Closing of each of

the following conditions (any or all of which may be waived by Buyer in whole or in part to the extent permitted by applicable law):

- (i) the State PUC Consents of the states with jurisdiction over the assets being conveyed at the Closing shall have been obtained;
- (ii) the Sale Order shall remain a Final Order; and
- (iii) there shall not be in effect any statute, rule, regulation, executive order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby.

#### **ARTICLE 10**

##### **SELLER'S CONDITIONS TO CLOSING**

The obligation of Sellers to consummate the sale of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment to Sellers' reasonable satisfaction of each of the following conditions:

10.1 Accuracy of Representations and Warranties. All representations and warranties of Buyer contained in this Agreement or in any document delivered pursuant hereto shall be true and correct in all material respects when made, and on and as of each Closing as though made on and as of such Closing.

10.2 Performance of Covenants. All covenants, agreements and obligations required by the terms of this Agreement to be performed, satisfied or complied with by Buyer at or before each Closing shall have been duly and properly performed in all material respects.

10.3 Closing Documents. Buyer shall have delivered the Purchase Price to Escrow Agent and all documents required to be delivered by it each Closing, as more specifically set forth in Article 5, in each case in form and substance reasonably satisfactory to Sellers.

10.4 Approval of Bankruptcy Court. The Bankruptcy Court shall have entered the Sale Order.

#### **ARTICLE 11**

##### **TERMINATION OF AGREEMENT**

11.1 Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:



(a) by mutual written consent of Buyer and Sellers (subject to the approval of the Bankruptcy Court) at any time, in which case the Earnest Money and all accrued interest thereon shall be returned to Buyer;

(b) upon written notice from Buyer to Sellers if (A) Buyer is not the winning bidder at the Auction, or (B) one or more of the conditions set forth in Article 9 is not satisfied on or before the dates specified in this Agreement for any reason other than a breach of this Agreement by Buyer, including if the Bid Procedures Order is not entered in accordance with the terms of this Agreement, or (C) the Sale Order is not entered by the Bankruptcy Court on or before August 7, 2013, through no fault of Buyer, or (D) the Initial Closing has not occurred on or before November 30, 2013, through no fault of Buyer, and in each such case the Earnest Money and any Escrow Amounts held by the Escrow Agent, together with any interest thereon shall be returned to Buyer;

(c) upon written notice from Sellers to Buyer if Buyer is not the winning bidder at the Auction, the Earnest Money and any Escrow Amounts previously delivered to the Escrow Agent, together with any interest thereon shall be returned to Buyer;

(d) upon written notice from Sellers to Buyer if any of the conditions precedent to Sellers' obligations hereunder shall have become incapable of fulfillment through no fault of Seller, the Earnest Money and any Escrow Amounts held by the Escrow Agent, together with any interest thereon shall be returned to Buyer;

(e) upon written notice from Sellers to Buyer if the aggregate amount of the Cure Amounts for the Essential Contracts are greater than 110% of the Cure Cap. or

(f) upon written notice from either party to the other party hereto if the Initial Closing does not occur on or before November 30, 2013 (unless the failure to consummate the purchase and sale of the Assets by such date shall be due to the action or failure to act of the party seeking to terminate this Agreement or any affiliate thereof), and if through no fault of Buyer, the Earnest Money and any Escrow Amounts previously delivered to the Escrow Agent, together with any interest thereon shall be returned to Buyer.

11.2 Effect of Termination. If this Agreement is terminated and the transactions contemplated hereby are abandoned pursuant to Section 11.1, then:

(a) the rights and obligations of the parties hereto under this Agreement shall terminate (other than the provisions of this Section, the provisions related to payment of the Termination Fee and Expense Reimbursement, and the treatment of the Earnest Money), there shall be no liability of any party hereto to any other party hereunder, and the parties shall not be obligated to proceed with the Closing and this Agreement shall be terminated; provided, however, that such termination shall not affect the right of any party to bring an action against another party for a breach occurring prior to the termination or for a wrongful termination; and

(b) Buyer shall be entitled to immediate return of all Escrow Amounts (other than as otherwise provided in Section 11.1) , without defense, setoff or recoupment of any kind or nature.

**ARTICLE 12**

**MISCELLANEOUS**

12.1 Notices. Any notices or other communications required or permitted hereunder to any party hereto shall be sufficiently given when delivered in person, or when sent by certified or registered mail, postage prepaid, or one business day after dispatch of such notice with an overnight delivery service, or when telecopied if an answer back is received by the sender, in each case addressed as follows:

In the case of Buyer:

TNCI Operating Company LLC  
114 E. Haley Street, Suite A  
Santa Barbara, CA 93101  
Attn: Jeff Compton, President and CEO  
Fax: 805-869-1445

With a copy to:

Bingham McCutchen LLP  
2020 K Street, N.W., Suite 1100  
Washington, DC 20006  
Attn: Jean L. Kiddoo  
Phone: 202-373-6000  
Fax: 202-373-6001

In the case of Seller:

Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, TX 78701  
Attn: Patricia Baron Tomasco  
Phone: 512-236-2076 – direct line  
Fax: 512-691-4438 – direct fax

or such substituted address or attention as any party shall have given notice to the others in writing in the manner set forth in this Section 12.1.



12.2 Amendment. This Agreement may be amended or modified in whole or in part only by an agreement in writing executed by all parties hereto and making specific reference to this Agreement.

12.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which, taken together, shall constitute a single agreement. It shall not be necessary that all signatures appear on every counterpart so long as each party executes at least one counterpart. Facsimile and other electronically delivered signatures shall be sufficient and binding for purposes of this Agreement and shall be treated as originals.

12.4 Binding on Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the parties hereto and their respective successors and permitted assigns in accordance with the terms hereof. Sellers may not assign its interest under this Agreement without the prior written consent of Buyer. Buyer shall have the right to designate any affiliate of Buyer to acquire any of the Assets, but such designation shall not relieve Buyer from the performance of its obligations hereunder.

12.5 Severability. In the event that any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement and any other application thereof shall not in any way be affected or impaired thereby; provided, however, that to the extent permitted by applicable law, any invalid, illegal, or unenforceable provision may be considered for the purpose of determining the intent of the parties in connection with the other provisions of this Agreement.

12.6 Publicity. Any public announcements concerning the transactions contemplated by this Agreement shall be planned and released by Buyer, and Sellers shall not act in this regard without the prior written approval of Buyer, which approval shall not be unreasonably withheld. This Section shall not impair any regulatory or fiduciary duties of Sellers.

12.7 Headings. The headings in the sections and subsections of this Agreement and in the Schedules are inserted for convenience only and in no way alter, amend, modify, limit or restrict the contractual obligations of the parties.

12.8 Expenses. Except to the extent otherwise provided in this Agreement, Sellers and Buyer each shall bear its own expenses incurred in connection with this Agreement and the transactions herein contemplated, including, but not limited to, legal and accounting fees and expenses.

12.9 Waivers. The parties may, by written agreement, (a) extend the time for the performance of any of the obligations or other acts of the parties hereto, (b) waive any inaccuracies in the representations contained in this Agreement or in any document delivered pursuant to this Agreement, (c) waive compliance with, or modify, any of the covenants or conditions contained in this Agreement, and (d) waive or modify performance of any of the

obligations of any of the parties hereto; provided, that no such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall operate as a waiver of, or an estoppel with respect to, any subsequent insistence upon such strict compliance other than with respect to the matter so waived or modified.

12.10 Entire Agreement; Law Governing; Submission to Jurisdiction. All prior negotiations and agreements between the parties hereto are superseded by this Agreement, and there are no representations, warranties, understandings or agreements other than those expressly set forth herein or in a Schedule delivered pursuant hereto, except as modified in writing concurrently herewith or subsequent hereto. This Agreement shall be governed by and construed and interpreted according to the internal laws of the State of Texas, determined without reference to conflicts of law principles and the Bankruptcy Code. The Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) shall have exclusive jurisdiction with respect to the interpretation of this Agreement, including without limitation any disputes regarding the computation of amounts due hereunder, and any other agreement or instrument contemplated hereby or entered into in connection herewith, or any of the transactions contemplated hereby or thereby, and the parties hereto hereby irrevocably submit to such jurisdiction and irrevocably agree that all claims in respect of any such dispute or proceeding may be heard and determined in such courts. Each party irrevocably consents to the service of any and all process in any action or proceeding arising out of or relating to this Agreement by the transmitting of copies of such process to each party at its address specified in Section 12.1 in a manner provided for in Section 12.1. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum in connection therewith.



IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed by their duly authorized representatives on the day and year first above written.

**BUYER:**

TNCI OPERATING COMPANY LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SELLERS:**

UPH HOLDINGS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

PAC-WEST TELECOMM, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

TEX-LINK COMMUNICATIONS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

UNIPOINT HOLDINGS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

UNIPOINT ENHANCED SERVICES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

UNIPOINT SERVICES, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

NWIRE, LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

PEERING PARTNERS COMMUNICATIONS,  
LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_



## Schedule 1.1

## Assets

1.1 (a)(i) Adequate Assurance Deposits<sup>1</sup>

<u>Date</u>	<u>Trans Description</u>	<u>Debit Amt</u>
9/13/10	NFS Leasing – Lease Agreement #1 Security Deposit	1,659.03
10/7/10	NFS Leasing – Lease Agreement #2 Security Deposit	240.54
11/17/10	NFS Leasing – Lease Agreement #3 Security Deposit	545.40
10/28/10	NFS Leasing – Lease Agreement #4 Security Deposit	90.95
1/25/11	NFS Leasing – Lease Agreement #5 Security Deposit	1,516.40
4/18/13	One Communications - ADEQUATE ASSURANCE PAYMENT	35,000.00
4/18/13	Electric Lightwave - ADEQUATE ASSURANCE PAYMENT	23,000.00
4/25/13	Intrado Informed Response - ADEQUATE ASSURANCE PAYMENT	5,086.00
4/26/13	RiverRock - ADEQUATE ASSURANCE PAYMENT OF 5 WEEKS PYMT OF \$5239.85	26,199.25
4/30/13	RiverRock - 2ND ADEQUATE ASSURANCE PAYMENT	15,935.00
5/1/13	Alpheus Communication - ADEQUATE ASSURANCE DEPOSIT	50,000.00
5/7/13	PACIFIC GAS AND ELECTRIC CO. - 1 OF 2 ADEQUATE ASSURANCE PAYMENTS	21,396.00
5/21/13	PACIFIC GAS AND ELECTRIC CO. - 2 OF 2 ADEQUATE ASSURANCE DEPOSITS	21,396.00
5/24/13	Canopco, Inc. - ADEQUATE ASSURANCE DEPOSIT	500.00
5/28/13	Coresite Services, Inc. - ADEQUATE ASSURANCE DEPOSIT	9,000.00
5/29/13	Allied Waste Services - 1/2 month Deposit	150.00
6/1/13	Allied Waste Services - 1/2 month- June	150.00
4/18/13	Equinix Canada, Inc - ADEQUATE ASSURANCE	1,951.00
4/18/13	8MS-CSF CORPORATION - ADEQUATE ASSURANCE	1,205.00
4/18/13	SMS/800, Inc. - ADEQUATE ASSURANCE	309.00
5/1/13	Alpheus Communications. LP - ADEQUATE ASSURANCE PAYMENT - PT1	36,450.00
5/7/13	Cogent Communications - COGENT ADEQUATE ASSURANCE DEPOSIT	32,000.00
5/28/13	CoreSite Services, Inc - ADEQUATE ASSURANCE DEPOSIT	7,000.00
[REDACTED]	CenturyLink - ADEQUATE ASSURANCE DEPOSIT	200,000.00
		<u>490,779.57</u>

Other deposits as of June 21, 2013:

- Prepaid Other, \$102,821.00

<sup>1</sup> Deposits will transfer only for Assigned Contract.

Schedule 1.1(b)

Fixed Assets

The spreadsheet "Fix Assets 2010.xls" contains a list of all fixed assets in all locations determined during 2010 inventory. The Sellers note that certain of the locations listed in this spreadsheet have been closed. To the best of Sellers' knowledge, some of the assets in the closed locations were moved to other operating locations. However, Sellers make no representations that the equipment in the spreadsheet exists, is operational or is located as described.



Schedule 1.1(c)  
(i) – Anonymous System Numbers

Debtor	Number	Org	Related Org Tech/Admin POC
Tex-Link Communications, Inc.	11,457	Tex-Link Communications, Inc. (TEXLI)	NOC1363-ARIN
Pac-West Telecom, Inc.	15,206	Pac-West Telecomm, INC. (PWTI)	ARINA11-ARIN
Pac-West Telecom, Inc.	6,465	Pac-West Telecomm, INC. (PWTI)	ARINA11-ARIN
Peering Partners Communications, LLC	32,582	Peering Partners Communications, LLC (PPCL-6)	NETWO4550-ARIN
Peering Partners Communications, LLC	33,060	Peering Partners Communications, LLC (PPCL-6)	NETWO4550-ARIN
UniPoint Holdings, Inc.	13,658	PointOne (POINT-5)	Sam Shiffman (SSH18-ARIN)
UniPoint Holdings, Inc.	29,926	PointOne (POINT-5)	Sam Shiffman (SSH18-ARIN)
UniPoint Holdings, Inc.	54,033	PointOne (POINT-5)	Sam Shiffman (SSH18-ARIN)
UniPoint Holdings, Inc.	32,559	PointOne (POINT-5)	Sam Shiffman (SSH18-ARIN)

Schedule 1.1(c) (continued)

(ii) – Telephone Numbers

*See phone\_numbers.xlsx for a complete listing of the phone numbers included as assets herein*



Schedule 1.1 (c) (continued)  
 (iii) – Domain Names

<b>Domain Name</b>	<b>Expiration Date</b>
TEXLINK.COM	29-Apr-2014
TEXLINKCOM.COM	25-Sep-2014
CABS-REVENUE.COM	1-May-2014
CABS-REVENUE.NET	1-May-2014
CNAMDIPS.COM	1-May-2014
CNAMDIPS.NET	1-May-2014
DEVTELASTIC.NET	30-Aug-2013
MDSG-PACWEST.COM	3-Sep-2014
PACWEST.COM	16-Aug-2013
QATELASTIC.NET	30-Aug-2013
TELASTIC.COM	30-Jun-2013
TELASTIC.NET	1-Jul-2013
TEXLINKCOM.COM	25-Sep-2014
DIGIFONE.BIZ	10-Nov-2013
DIGIFONE.NET	14-Sep-2013
DIGITFONE.COM	02-Sep-2013
DIGITFONE.NET	02-Sep-2013
NWIRE.NET	03-Apr-2014
NWIRELLC.COM	25-Mar-2014
NWIREPORTAL.COM	14-Apr-2014
NWIREPORTAL.NET	14-Apr-2014
PACWESTPORTAL.COM	08-Jun-2014
PEERINGPARTNERS.NET	30-Nov-2013
PEERINGPARTNERSPORTAL.COM	19-Jun-2014
POINTONE.COM	30-Sep-2013
POINTONE.NET	23-Jul-2013
POINTONEDNS.COM	01-Aug-2013
POINTONEEMAIL.COM	25-Sep-2013
POINTONEFTP.COM	17-Nov-2013
POINTONEIM.COM	14-May-2014
POINTONEIT001.COM	30-Aug-2013
POINTONEIT002.COM	30-Aug-2013
POINTONEIT003.COM	30-Aug-2013
POINTONEPORTAL.COM	14-Jan-2014
POINTONETRAINING.COM	06-Dec-2013
UNIPOINTHOLDINGS.COM	11-Jan-2014
UPHHOLDINGS.COM	24-Mar-2014
VIPVOIP.NET	29-Nov-2013
VIPVOP.COM	14-Aug-2013
VIPVOP.NET	29-Nov-2013
WATSONCALLING.COM	29-Aug-2013

Schedule 1.1 (d)

(i) – Trade or corporate names used:

<i>Name</i>	<i>Nature of Business</i>	<i>Beginning and ending dates</i>
Tex-Link Communications, Inc.	Telecommunication and data services	October 14, 1994
UniPoint Enhanced Services, Inc.	Telecommunications	September 5, 2002
UniPoint Services, Inc.	Telecommunications	October 4, 2002-present
nWire, LLC	Telecommunications	April 22, 2010-present
Peering Partners Communications, LLC	Telecommunications	November 30, 2010-present
Pac-West Telecomm, Inc.	Telecommunication and data services	August 27, 1999-present
UniPoint Holdings, Inc., d/b/a PointOne	Communications services	January 15, 2002-present

(ii) -- Software (to the extent owned by Seller)

The Unix or Windows operating system on all servers and office computers  
 All owned copies of Microsoft Office and other operating software.  
 All copies of Microsoft SQL Server including all versions and years  
 Sage Software 10-user license to Peachtree Quantum 2011  
 Telastic™ Software embodied by agreements below

(iii) -- License and Employment Agreements

The “2010 Krokosz Employment Agreement” is a partially-signed “Executive Employment Agreement” between Pac-West Telecomm, Inc. (no signature) and Matthew Krokosz (signature) as of “June \_\_ 2010.”

2010 Bozzo Employment Agreement. “Executive Employment Agreement” between Pac-West Telecomm, Inc. and Victor Anthony Bozzo dated effective as of “June 28, 2010.”

“2011 Krokosz Employment Agreement” is an unsigned “Employment Agreement” between Pac-West Telecomm, Inc. and Mathew Krokosz dated January 31, 2011, and retroactively effective as of January 1, 2011.



“2011 VoiceCo License” is a fully-signed “License Agreement” between VoiceCo Network, Ltd., and Pac-West Telecomm, Inc. dated April 15, 2011.

Schedule 1.1 (e)  
(i) – Facilities and Colocation Licenses

Address	City	St	Use	Zip	Supplier	Lease *	Cure\$
313 N 3rd Ave.	Phoenix	AZ	Pac West	85003	ELI/ Integra	No document found	0
4003 E Speedway Blvd Ste 119	Tucson	AZ	Pac West	85712	Login	Have unsigned undated MSA	0
624 S. Grand, One Wilshire Bldg	Los Angeles	CA	Pac West	90017	Hines REIT One Wilshire	Yes - term 9/30/18	190,199
650 S. Grand Ste 1000	Los Angeles	CA	PointOne	90017	US Colo	Yes - terminates 12/31/13	7,428
624 S. Grand, 4th Floor MMR	Los Angeles	CA	PointOne	90017	One Wilshire/Core Site	No - month to month	5,510
624 S. Grand, 4th Floor MMR	Los Angeles	CA	PacWest	90017	Core Site MMR	Yes 9/30/14	29,450
1624 Franklin, Franklin Bldg.	Oakland	CA	Pac West	94612	Cogent	Month to month	0
301 Broadway, Ste 299 & 399	San Antonio	CA	Pac West	78205	Area Realty - Taylor Street Ventures	Yes 3/1/15	3,747
4210 Coronado Ave,	Stockton	CA	Pac West	95204	Stockton Office - Pilot	No - month to month	0
151 Front St. #706	Toronto	Canada	PointOne	M5J2 N1	Equinix - Switch & Data	No - month to month	0
100 W. Lucerne Cir, Ste 200	Orlando	FL	PointOne	32801	Colo Solutions	Closed	0
56 Marietta St., 6th	Atlanta	GA	PointOne	30303	Equinix - Switch & Data	No - month to month	0
111 8th Ave., Ste 1533	New York	NY	PointOne	10001	Equinix - Switch & Data	No - month to month	0
60 Hudson St., Ste. 1904	New York	NY	PointOne	10013	Equinix - Switch & Data	No - month to month	0
921 SW Washington St	Portland	OR	Pac West	97205	Zayo	Cost includes circuit	0
104 N. Broad ST., 9th fl, #990	Philadelphia	PA	PointOne	19108	Equinix - Switch & Data	No - month to month	0
6500 Riverplace Blvd Bldg. 2 Ste. 200	Austin	TX	Corporate Office	78730	Corporate Office - CBRE	Yes - 5/31/15	33,110
800 Brazos, Ste 460 & 450	Austin	TX	Pac West	78701	CCI Brazos	Yes - Term 7/31/17	17,384
11320 Hwy 620 North	Austin	TX	Storage Facility	78726	Private Storage Facility	No - month to month	0
13601 Preston Rd,	Dallas	TX	Pac West	75240	Boxer	Yes - Term	15,624



Address	City	St	Use	Zip	Supplier	Lease *	Cure\$
						8/31/14	
2323 Bryan, Ste. 2323	Dallas	TX	PointOne	75201	Equinix - Switch & Data	No - month to month	0
2323 Bryan, Ste. 1400	Dallas	TX	PointOne	75201	FPL Fibernet	No contract	77,677
1770 St. James Place, Ste 620	Houston	TX	Pac West	77056	Rockwell	Yes - 6/30/17	69,150
12001 IH 45	Houston	TX	PointOne	77060	Level 3	? Appears to be month to Month	0
323 Broadway St.	San Antonio	TX	PointOne	75201	FPL Fibernet	No contract	31,260
851 Coho Way	Bellingham	WA	Pac West	98255	Fiber Cloud	No contract	0
2001 6th Ave, Suite 2505	Seattle	WA	Pac West	98121	Fiber Cloud	Yes - 10/28/13	392
1101 A St, Suite 400	Tacoma	WA	Pac West	98402	Optic Fusion	No contract	196
Pegwell Exchange, Christ Church	Barbados		PointOne		Lime - Trade	No - month to month	0
65 Duke St.	Jamaica Kingston		PointOne		Lime - Trade	No - month to month	0
<b>TOTAL</b>							<b>481,126</b>

Schedule 1.1 (e)  
(ii) – Customer Contracts

Customer Name	Debtor Affiliation	Description	Cure
Accudata, Inc.	Pac-West	Master Services Agreement dated 7/31/2012	0
Advanda Technologies, Inc.	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 1/30/2003	0
All Access Telecom, Inc.	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 12/13/2010	0
Alliance Group Services, Inc.	Pac-West Telecomm, Inc.	Telastix Summary Proposal dated 7/19/2010	0
NOS Communications, Inc.	UniPoint Holdings, Inc. (Callipso)	Carrier Service Agreement dated 6/4/2004 plus addendums	0
Bell Canada	UniPoint Enhanced Services, Inc.	Bilateral Voice Services Agreement dated 9/27/2004 plus amendments	0
BCE Nexia Voice Services Corporation	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 8/27/2009	0
Broadvox LLC	UniPoint Holdings,	Carrier Services Agreement	0

Customer Name	Debtor Affiliation	Description	Cure
	Inc. (CommPartners)	dated 1/30/2006	
Clearwire LLC	Pac-West Telecomm, Inc.	Master Services Agreement dated 2/4/2005 plus supplemental exhibits and amendments	0
Comtel Telecom Assets LP d/b/a Excel Telecommunications	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 5/27/2010	0
Global Crossing Telecommunications, Inc.	Pac-West Telecomm, Inc.	Master Services Agreement dated 4/6/2006 plus amendments	0
Impact Telecom, Inc.	Pac-West Telecom, Inc.	Telecommunications Service Agreement dated 4/14/2010	0
Impact Telecom, Inc.	Pac-West Telecom, Inc.	Service Order Agreement dated 8/27/2010 plus Standard Terms and Conditions of Service dated 7/30/2009	0
Inmate Calling Solutions, LLC d/b/a ICSolutions	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 5/5/2011	0
Intelepeer, Inc.	Pac-West Telecom, Inc.	Master Services Agreement dated 5/16/2008 plus supplemental exhibits and amendments	0
Interoute Communications Limited	UniPont Services, Inc.	Master Agreement dated 3/27/2003	0
Fuse 3 (Iprot, Inc.)	Pac-West Telecom, Inc.	Master Services Agreement dated 10/28/2004	0
iTalk Global Communications, Inc.	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 2/3/2004	0
j2 Global Communications, Inc. (JFax.com, Inc.)	Pac-West Telecom, Inc.	Enhances Services Provider Access Services Agreement dated 3/24/1999 plus amendment	0
j2 Global Communications, Inc.	Pac-West Telecom, Inc.	Master Services Agreement dated 6/20/2008 plus supplemental exhibit and amendments	0
Locus Telecommunications, Inc.	Pac-West Telecom, Inc.	Master Services Agreement dated 11/7/2005	0
Locus Telecommunications, Inc.	Pac-West Telecom, Inc.	General Terms and Conditions for Carrier Agreements dated 10/19/2009 plus amendments	0



Customer Name	Debtor Affiliation	Description	Cure
Lunex Telecom	Pac-West Telecom, Inc.	Service Order Agreement dated 3/31/2010 plus Standard Terms and Conditions of Service	0
01 Communications	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 3/16/2007	0
Qwest Communications Company, LLC	nWire, LLC (Grande Communicatinos Networks, LLC)	Carrier Service Agreement for Domestic Terminating Traffic dated 2/22/2010 plus amendment	0
Raza Telecom	Pac-West Telecom, Inc.	Service Order Agreement dated 4/3/2009 plus Standard Terms and Conditions of Service	0
Raza Telecom	Pac-West Telecom, Inc.	Service Order Agreement dated 6/9/2009 plus Standard Terms and Conditions of Service	0
Skype Communications S.a.r.l.	UniPoint Enhanced Services, Inc. d/b/a PointOne	Outgoing Services Reseller Agreement dated 9/24/2009	0
SoundBite Communications, Inc.	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Services Agreement dated 5/15/2009	0
Sprint Communications Company L.P.	UniPoint Enhanced Services, Inc. d/b/a PointOne	Termination Services Agreement dated 4/27/2010	0
Teamwork Telecom, Inc.	Pac-West Telecom, Inc.	Master Services Agreement dated 8/17/2006 plus supplemental exhibit, addendum and plus Standard Terms and Conditions of Service with addendum	0
Telecom House, Inc.	Pac-West Telecom, Inc.	Service Order Agreement dated 12/31/2010 plus addendum	0
Teligence (US) Inc. (Tone Networks, Inc.)	Pac-West Telecom, Inc.	Master Services Agreement dated 6/27/2006 plus addendum and supplemental exhibit	0
Total Call International, Inc.	Pac-West Telecom, Inc.	Master Services Agreement dated 10/25/2006 plus addendum	0
Metrocall, Inc. d/b/a USA Mobility	Pac-West Telecom, Inc.	Master Services Agreement dates 11/17/2005 plus addendums, supplemental exhibit, amendments and Standard Terms and Conditions of Service with addendum	0
Vertex SSX Corporation	Pac-West Telecom, Inc.	Master Services Agreement dates 10/18/2006 plus addendum	0

Customer Name	Debtor Affiliation	Description	Cure
NuVox Communications	UniPoint Enhanced Services, Inc. d/b/a PointOne	Master Service Agreement dated 6/30/2003	0
US LEC Acquisition Co.	nWire, LLC (Grande Communications Networks, LLC)	Master Service Agreement dated 2/1/2005 plus supplements and Products and Services Agreement	0



Schedule 1.1 (e)  
(iii) – Vendor Contracts<sup>2</sup>

Vendor Name	Debtor Affiliation	Description
360 Networks (USA) Inc	Pac-West Telecomm, Inc.	Master Service Agreement; dated December 4, 2000
360 Networks (USA) Inc	Pac-West Telecomm, Inc.	1st Addendum to MSA; dated December 4, 2000
360networks (USA) Inc.	Pac-West Telecomm, Inc.	Master Services Agreement dated December 4, 2000, plus addendum and amendments
AboveNet	Pac-West Telecomm, Inc. formerly Tex-Link Communications	Wholesale Agreement dated October 29, 2010 & additional amendments
Access Cost Engineer	Pac-West Telecomm, Inc.	Software License and Professional Services Agreement dated September 15, 2009 & additional amendments
Alpheus Communications, L.P.	nWire, LLC	Wholesale Master Service Agreement dated September 28, 2010
Alpheus Communications, LP	UniPoint Services, Inc. (assumed from UTEX)	Wholesale Master Service Agreement dated January 27, 2004
Alpheus Communications, LP	UniPoint Services, Inc.	Wholesale Master Service Agreement dated May 2, 2007
Alpheus Communications, LP	UniPoint Services, Inc.	Assignment and Assumption Agreement; dated June 18, 2007
Alpheus Communications, LP	UniPoint Services, Inc.	Wholesale Master Services Agreement; dated May 2, 2007
American Telesis	Tex-Link Communications, Inc.	Private Line Service Agreement dated March 17, 2008
AT&T (Southwestern Bell Telephone Company d/b/a AT&T Texas	Tex-Link Communications, Inc.	Interconnection Agreement dated June 7, 2010
Bandwidth.Com, Inc.	Pac-West Telecomm, Inc.	Dash 911, dated April 6, 2011
Bandwidth.Com, Inc.	Pac-West Telecomm, Inc.	Service Order, Dated November 19, 2010
Bandwidth.Com, Inc.	Pac-West Telecomm, Inc.	Rate Change SOF; dated November 19, 2010
Bandwidth.Com, Inc.	Pac-West Telecomm, Inc.	Master Service Agreement - Emergency Services; dated April 6, 2011
Bandwidth.Com, Inc.	Pac-West Telecomm, Inc.	SMS Letter of Authorization, dated March 31, 2011
Bandwith.com, Inc.	Pac-West Telecomm, Inc.	Master Service Agreement dated October 18, 2010, plus addendum and amendments
Bandwith.com, Inc.	Pac-West Telecomm, Inc.	Master Service Agreement dated April 6, 2011
C3 Communications,	UniPoint Holdings, Inc.	General Service Agreement, dated January 30, 2002

<sup>2</sup> Sorted by Vendor, may contain duplicate entries.

Vendor Name	Debtor Affiliation	Description
Inc.		
C3 Communications, Inc.	UniPoint Holdings, Inc.	Colocation License Agreement - 2323 Bryan, Suite 2323; dated January 30, 2002
C3 Communications, Inc. (purchased by NextEra FiberNet, LLC d/b/a FPL Fibernet)	UniPoint Holdings, Inc.	General Services Agreement dated January 30, 2002
Central Telephone Company dba Sprint of Nevada	Pac-West Telecomm, Inc.	Master Interconnection, Colocation and Resale Agreement for the State of Nevada; dated November 12, 2004
CenturyLink	See Qwest	
Citizen Telecommunication Co to Tuolumne	Pac-West Telecomm, Inc.	Compensation Agreement' dated January 1, 2008
Citizen Telecommunications Company of California, Inc.	Pac-West Telecomm, Inc.	Agreement for Local Wireline Network Interconnection; dated November 1, 1999
Citizen Telecommunications Company of California, Inc.	Pac-West Telecomm, Inc.	Amendment #8 to ICA; dated August 31, 2007
Citizen Telecommunications Company of California, Inc.	Pac-West Telecomm, Inc.	Amendment #9 to ICA; dated May 1, 2009
Citizen's Telecommunication Company of California, Inc.	Pac-West Telecomm, Inc.	Agreement for Local Wireline Network Interconnection dated November 1, 1999, plus amendments and extensions
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Service Level Agreement (no date)
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement Dated January 13, 2003
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement Dated March 10, 2002
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated April 23, 2002
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated June 30, 2003
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated May 30, 2002
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreements dated July 25, 2003



Vendor Name	Debtor Affiliation	Description
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated July 9, 2003
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated October 27, 2004
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated October 31, 2003
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated November 17, 2004
Cogent Communications, Inc.	UniPoint Holdings, Inc.	Customer Subscriber Agreement dated
Cogent Communications, Inc.	Pac-West Telecomm, Inc.	Network Service Addendum - Colo North America, dated April 30, 2008
Cox Arizona Telecom, LLC	Pac-West Telecomm, Inc.	Network Interconnection Agreement dated February 9, 2004
COX California Telecom LLC	Pac-West Telecomm, Inc.	Network Interconnection Agreement; dated February 1, 2003
Cox California Telecom, LLC	Pac-West Telecomm, Inc.	Network Interconnection Agreement dated December 1, 2003
COX Nevada Telcom LLC	Pac-West Telecomm, Inc.	CLEC Interconnection Agreement; dated September 13, 2007
Cox Nevada Telecom, LLC	Pac-West Telecomm, Inc.	CLEC Interconnection Agreement dated September 18, 2007
EarthLink Inc	Pac-West Telecomm, Inc.	Master Service Agreement; dated July 1, 2006
EarthLink Inc	Pac-West Telecomm, Inc.	Addendum to MSA; dated July 15, 2006
EarthLink Inc	Pac-West Telecomm, Inc.	Amendment #1 to MSA; dated January 9, 2006
EarthLink Inc	Pac-West Telecomm, Inc.	Amendment #3 to MSA; dated October 27, 2008
EarthLink Inc	Pac-West Telecomm, Inc.	Amendment #4 to MSA; dated January 26, 2009
EarthLink Inc	Pac-West Telecomm, Inc.	Amendment #5 to MSA; dated July 20, 2009
Electric Lightwave, LLC	Pac-West Telecomm, Inc.	Carrier Account Master Service Agreement dated April 19, 2004
Electric Lightwave, LLC	Pac-West Telecomm, Inc.	Information Server Access Services Agreement dated October 11, 2002, plus addendum
Embarq (Central Telephone Company – Nevada d/b/a Sprint of Nevada)	Pac-West Telecomm, Inc.	Master Interconnection, Collocation and Resale Agreement dated November 12, 2004
Equinix Operating Co., Inc.	UniPoint Services, Inc.	Master Service Agreement United States October 28, 2010
FPL FiberNet	UniPoint Holdings, Inc.	Notice of assumption of C3 and Grande; dated December 7, 2010
Global Crossing Telecommunications,	Pac-West Telecomm, Inc.	Master Services Agreement dated November 6, 2009, plus amendment



Vendor Name	Debtor Affiliation	Description
Inc.		
Global Telecom	Pac-West Telecomm, Inc.	Bandwidth Service Order dated August 5,2010
Global Valley Network, Inc.	Pac-West Telecomm, Inc.	Compensation Agreement; dated January 1, 2007
Grande Communications Networks, Inc.	UniPoint Holdings, Inc.	Master Service Agreement dated May 1, 2002, plus amendments
Grande Communications Networks, Inc.	UniPoint Holdings, Inc.	Amendment to Master Services Agreement - Interconnection to 2323 Bryan; dated Novmeber 1, 2003
GTE California	Pac-West Telecomm, Inc.	Interconnect Agreement between GTE California and PacWest Telecomm; dated March 24, 2000
GTE Northwest	Pac-West Telecomm, Inc.	Interconnect, Resale, Unbundling Agreement; dated March 17, 1999
Electric Lightwave	Pac-West Telecomm, Inc.	Letter accepting transfer of Electric Lightwave ICA to PacWest with conditions; dated February 3, 2000
GTE Southwest Inc.	Tex-Link Communications, Inc.	Agreement for the State of Texas; dated April 7, 2004
GTE Southwest Incorporated, d/b/a Verizon Southwest	Tex-Link Communications, Inc. (Think 12 Corporation d/b/a Hello Depot)	Agreement (no date), plus amendments, adopted July 29, 2004 by Tex-Link
Indiana Bell Telephone Company Incorporated d/b/a AT&T Indiana by AT&T Operations, Inc.	Pac-West Telecomm, Inc.	Interconnection and/or Resale Agreement dated April 28, 2006
Intrado Inc.	UniPoint Holdings, Inc.	Agreement for 911 Network and Data Services dated January 12, 2005, plus amendment
Level 3 Communications LLC	Pac-West Telecomm, Inc.	Master Service Agreement, dated April 26, 2004;
Level 3 Communications, LLC	Pac-West Telecomm, Inc.	Interconnection Agreement (no date)
Level 3 Communications, LLC	Pac-West Telecomm, Inc.	Master Service Agreement dated April 26, 2004
Level 3 Communications, LLC	UniPoint Holdings, Inc.	Master Service Agreement dated August 28, 2002
MetroPCS California, LLC	Pac-West Telecomm, Inc.	Interconnection Agreement for Transport and Termination of Traffic dated June 1, 2006
Mpower Communications Corp	Pac-West Telecomm, Inc.	Network Interconnection Agreement; dated July 1, 2004
Mpower Communications, Corp.	Pac-West Telecomm, Inc.	Network Interconnection Agreement dated July 1, 2004
NeuStar, Inc.	Pac-West Telecomm, Inc.	Master Services Agreement dated October 3, 2008
NeuStar, Inc.	Pac-West Telecomm, Inc.	Service Order Number 1 dated October 3, 2008
Neustar, Inc.	UniPoint Services, Inc.	Neustar SIP-IX Statement of Work dated September



Vendor Name	Debtor Affiliation	Description
		1, 2012, plus amendment
Nevada Bell by its agent, SBC Communications, Inc.	Pac-West Telecomm, Inc.	Interconnection Agreement dated August 25, 1999, plus amendments and extensions
One Communications	Pac-West Telecomm, Inc.	Wholesale Agreement dated April 15, 2008 & additional amendments
Pacific Bell Telephone Co	Pac-West Telecomm, Inc.	Interconnection Agreement - as amended;
Pacific Bell Telephone Co	Pac-West Telecomm, Inc.	Confidential Settlement Agreement; dated October 22, 2008
Pacific Bell Telephone Company d/b/a SBC Pacific Bell Telephone Company	Pac-West Telecomm, Inc.	Interconnection Agreement dated May 15, 2003, plus amendments
PaeTec Communications (Windstream)	Pac-West Telecomm, Inc.	Traffic Exchange and Compensation Agreement dated December 21, 2007
Qwest Corporation	Pac-West Telecomm, Inc. (Level 3)	Interconnection Agreement dated December 14, 2006, plus amendments
Qwest Corporation (Colorado)	Pac-West Telecomm, Inc. (LSSi Corp)	Interconnection Agreement dated June 24, 2007, plus amendments
Qwest Corporation	Pac-West Telecomm, Inc. (Talk America)	Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunication Services dated May 24, 2002, plus amendments
Qwest Corporation	Pac-West Telecomm, Inc. (WTI, LLC)	Interconnection Agreement dated February 2, 2007
Qwest Corporation	Pac-West Telecomm, Inc. (LSSi Corp)	Interconnection Agreement dated August 12, 2005
Qwest Corporation	Pac-West Telecomm, Inc.	Interconnection Agreement dated August 27, 2009
Qwest Corporation	Pac-West Telecomm, Inc.	Adoption of Wireline ICA for PacWest Telecomm Inc. for State of Arizona; dated February 11, 2002
Qwest Corporation	Pac-West Telecomm, Inc.	Amendment to the Interconnection agreement for the State of Arizona; dated September 8, 2003
Qwest Corporation	Pac-West Telecomm, Inc.	Interconnection Agreement for the State of Colorado; dated August 24, 2007
Qwest Corporation	Pac-West Telecomm, Inc.	Agreement to assume Talk America Interconnect Agreement for State of Idaho; dated October 18, 2008
Qwest Corporation	Pac-West Telecomm, Inc.	Interconnect Agreement for State of Idaho; dated November 9, 2005
RiverRock Systems, Ltd.	Pac-West Telecomm, Inc.	Application Service Provider Agreement dated May 1, 2013
Singlepipe	Pac-West Telecomm, Inc.	Wholesale Master Service Agreement dated August



Vendor Name	Debtor Affiliation	Description
		6, 2010 & additional amendments
Southern California Edison	Pac-West Telecomm, Inc.	Agreement dated January 23, 2003
Southwestern Bell Telephone Company	Tex-Link Communications, Inc.	Interconnection Agreement for the State of Texas, as amended; dated August 25, 2005
Southwestern Bell Telephone, L.P. d/b/a SBC Texas by SBC Operations, Inc.	Pac-West Telecomm, Inc.	Interconnection Agreement dated August 25, 2005
Surewest Telephone	Pac-West Telecomm, Inc.	Agreement dated May 31, 2005
Switch and Data Management Company, LLC	UniPoint Holdings, Inc.	Master Services Agreement dated July 31, 2008
Telcordia	Pac-West Telecomm, Inc.	Professional Services Contract dated December 2006
Telepacific Communications	Pac-West Telecomm, Inc.	Settlement agreement in data room – no contract
TeleSphere Software, Inc.	Pac-West Telecomm, Inc.	Professional Services Agreement dated September 2, 2010
Telesphere Software, Inc.	Pac-West Telecomm, Inc.	Professional Service Agreement; dated September 2, 2010
Time Warner Telecom Holdings, Inc. and Time Warner Telecom Management Co. LLC	Pac-West Telecomm, Inc.	Traffic Exchange Agreement dated November 1, 2007
Transaction Network Services, Inc.	Pac-West Telecomm, Inc.	Master Contract; dated August 7, 2012
Transaction Network Services, Inc.	Pac-West Telecomm, Inc.	Trunk Signaling & TCAP/Class Service Contract; dated October 25, 2010
Transaction Network Services, Inc.	Pac-West Telecomm, Inc.	Carrier ENUM Service Contract; dated October 25, 2010
Transaction Network Services, Inc.	nWire LLC	Master Contract; dated August 11, 2010
Transaction Network Services, Inc. (TNS)	Pac-West Telecomm, Inc.	Carrier Enum Service Contract dated October 25, 2010
Transaction Network Services, Inc. (TNS)	Pac-West Telecomm, Inc.	Master Contract dated August 7, 2012
Transaction Network Services, Inc. (TNS)	Pac-West Telecomm, Inc.	Trunk Signaling and TCAP/Class Service Contract dated October 25, 2010
Verizon – CA	Pac-West Telecomm, Inc.	Interconnection Agreement dated May 28, 2003, plus amendments
Verizon (GTE Northwest Incorporated)	Pac-West Telecomm, Inc. (Electric Lightwave, Inc.)	Interconnection, Resale and Unbundling Agreement (no date)
Verizon (GTE)	Pac-West Telecomm, Inc.	Interconnection Agreement dated March 24, 2000
Verizon (GTE)	Pac-West Telecomm, Inc.	Interconnection, Resale and Unbundling Agreement



Vendor Name	Debtor Affiliation	Description
	(Electric Lightwave, Inc.)	(no date)
Verizon California, Inc	Pac-West Telecomm, Inc.	Agreement for the State of California; dated May 28, 2003
Verizon Wholesale Markets	Pac-West Telecomm, Inc.	Negotiated Amendment to PacWest-Verizon Interconnect Agreement; dated June 18, 2008
Verizon Wholesale Markets	Tex-Link Communications, Inc.	Letter accepting transfer of Think 12 Corp ICA to Tex-Link; dated June 24, 2004
VoIP360, Inc.	Pac-West Telecomm, Inc.	Master Services Agreement dated May 19, 2010, plus amendments
VoIP360, Inc.	Pac-West Telecomm, Inc.	Master Service Agreement; dated May 19, 2010
VoIP360, Inc.	Pac-West Telecom, Inc.	Amendment #1 to MSA; dated November 19, 2010
VoIP360, Inc.	Pac-West Telecom, Inc.	Amendment #2 to MSA; dated January 7, 2011
VoIP360, Inc.	Pac-West Telecomm, Inc.	Amendment #3 to MSA; dated May 5, 2011
VoIP360, Inc.	Pac-West Telecomm, Inc.	Termination Service Amendment to MSA; dated May 19, 2010
WilTel Communications	Pac-West Telecomm, Inc.	Telecommunications Service Agreement dated March 19, 2003
Wisconsin Bell, Inc. d/b/a SBC Wisconsin by SBC Operations	Pac-West Telecomm, Inc.	Interconnection and/or Resale Agreement dated November 23, 2005
XO Communications Services, Inc.	Pac-West Telecomm, Inc.	
Zayo Fiber Solution	Pac-West Telecomm, Inc	Wholesale Agreement dated May 19,2010 & additional amendments
Zeus Wireless	UniPoint Services, Inc.	Master Services Agreement dated April 28, 2010
ZOHO Corporation	Pac-West Telecomm, Inc.	Annual Subscription

(v) Vendor Cure Amounts(A) Interconnect Agreements

Vendor	State	Direct Connect	Cure Amount (\$)
CenturyLink	AZ	Yes	81,830.28
CenturyLink	CO	Yes	29,091.68
CenturyLink	ID	Yes	6,233.82
CenturyLink	OR	Yes	44,533.06
CenturyLink	UT	Yes	28,749.46
CenturyLink	WA	Yes	77,018.53
CenturyLink	NV	Yes	69,577.76
COX	CA	Yes	329,268.79

COX	NV	No	1,959.98
COX	AZ	Yes	80,697.66
Frontier	CA	Yes	75,888.86
Frontier	NV	Yes	41,524.45
Frontier	OR	Yes	20,650.59
Frontier	WA	Yes	102,990.37
Metro PCS		No	0.00
MPower	CA	No	1,130.21
Surewest	CA	Yes	5,348.95
Verizon	CA	Yes	240,835.12
Verizon	TX	Yes	2,366.44
Verizon Business	CA	No	17,275.48
AT&T	CA	Yes	0.00
AT&T	NV	Yes	0.00
AT&T	TX	Yes	0.00
<b>TOTAL</b>			<b>1,256,971.49</b>

(B) Local Circuit Cure Costs<sup>3</sup>

Vendor	State	Cure Amount (\$)
CenturyLink	AZ	8,981.65
CenturyLink	CO	14,425.95
CenturyLink	ID	2,424.74
CenturyLink	OR	20,129.10
CenturyLink	UT	6,387.23
CenturyLink	WA	29,452.83
CenturyLink	NV	3,591.84
Surewest	CA	6,486.15
Verizon	CA	143,763.31
AT&T *	CA	931,117.27
AT&T	NV	23,294.50
AT&T	TX	174,725.16
<b>TOTAL</b>		<b>1,364,779.73</b>

\* The AT&T cure costs may be partially offset by a \$300,000 adequate assurance deposit provided by PacWest to AT&T during the course of Pac-West's earlier bankruptcy.

<sup>3</sup> Tariffed costs not arising under Inter Connection Agreement



(C) Long-Haul Circuit Providers and Cure Costs

<u>VENDOR</u>	<u>CURE AMOUNT (\$)</u>
Alpheus	121,777.59
American Telesis	698.00
Centurylink Dedicated- CA	106,916.77
Centurylink Dedicated- TX	748.00
Legacy Level 3	7,600.00
Level3- Legacy Wiltel	7,490.00
Integra/ELI	71,485.00
Southern California Edison	49,240.00
Telepacific- Legacy Mpower	41,916.09
Transaction Network Services	40,096.00
TW Telecom	55,048.75
XO Communications	96,727.96
<b>Total</b>	<b>599,744.16</b>

Schedule 1.1 (e)  
(iv) – Colocation Agreements

Name of Party	Debtor Affiliation	Description	Cure Amount
C3 Communications, Inc.	UniPoint Holdings, Inc.	Colocation License Agreement dated February 1, 2002	\$0.00
Carlyle One Wilshire, L.L.C.	UniPoint Holdings, Inc.	License Agreement for Use of Telecommunications Conduit and Conduit Interconnection Room dated September 1, 1999, plus amendment	\$5,510.00
ClearBlue Technologies	UniPoint Holdings, Inc.	Colocation Agreement dated June 1, 2002	\$0.00
Cogent Communications, Inc.	Pac-West Telecomm, Inc.	Colocation Services Agreement dated April 30, 2008	\$0.00
Colo Solutions Global Services, Inc.	UniPoint Holdings, Inc.	Master Agreement for Colocation Space (no date)	\$0.00
Colo Solutions, Inc.	UniPoint Services, Inc.	Master Agreement dated October 8, 2003 with renewals	\$0.00
Comfluent, Inc.	UniPoint Holdings, Inc.	Co-Location Services Agreement dated August, 2002	\$0.00
Coresite One Wilshire, L.L.C.	Pac-West Telecomm, Inc.	Master License and Service Agreement dated January 13, 2012	\$29,450.00
FiberCloud	Pac-West Telecomm, Inc.	Contract for Service (colocation space) dated September 16, 2009, plus amendment	\$392.00
Raco NYC Inc.	UniPoint Holdings, Inc.	Co-Location and Facilities Management Services Agreement dated October 1, 2002	\$0.00
Switch and Data Facilities Company, LLC	UniPoint Holdings, Inc.	Master License Agreement dated January 31, 2002	\$0.00
Switch and Data Facilities Company, LLC	UniPoint Holdings, Inc.	Master License Agreement dated January 30, 2002	\$0.00
US Colo, LLC	UniPoint Holdings, Inc.	License Agreement dated January 1, 2002	\$7,428.00



Schedule 1.1 (e)  
(v) – Access Transport Agreements

Name of Party	Debtor Affiliation	Description	Cure Amount
Alpheus Communications, L.P.	UniPoint Service, Inc.	Assignment and Assumption Agreement, dated June 14, 2007, effective July 1, 2007	\$0.00
Cogent Communications	Pac-West Telecomm, Inc.	Network Services Addendum— Colo North America	\$0.00
RCN New York Communications, LLC	Comm Partners, LLC (Peering Partners Communications Holdings, LLC)	RCN Business Solutions Agreement, dated November 13, 2007	\$0.00
RCN Telecom Services, Inc.	Unipoint Services Inc.	Master Service Agreement for Connection Services, dated Dec. 17, 2003 (unexecuted copy)	\$0.00
Bell Canada	UniPoint Enhanced Services, Inc.	Bilateral Voice Services Agreement, and Schedules A, B, and C thereto, dated effective January 1, 2013	\$0.00
Transaction Network Services	nWire, LLC	Master Contract, dated effective August 11, 2010	\$0.00

Schedule 1.1 (e)  
(vi) – Qwest IRU Agreement

Name of Party	Debtor Affiliation	Description	Cure Amount
Qwest Communications Corporation (“Qwest”)	Pac-West Telecomm, Inc.	Agreement to modify the following: (1) IRU Agreement effective as of June 30, 2000 (“IRU Amendment 1”); (2) Amendment No. 1 to the IRU Agreement effective April 18, 2001 (“IRU Amendment No. 1”); (3) Dial Access Services Agreement entered into on January 31, 2002 (“Dial Access Agreement”); and (4) Wholesale Services Agreement dated effective as of July 5, 2001 (“WSA”)	\$0.00

Schedule 1.1 (e)  
(vii) Lease and Rented Circuits

To the extent not listed above, the spreadsheet "UPH Circuit List.xlsx" (incorporated herein) lists all of the circuits used by Seller, along with the monthly operating cost of each circuit.



Schedule 1.1 (e)  
(x) – Equipment Leases

Debtor	Vendor	Agreement	Lease Start Date	End Date	Security Deposit	Cure (\$)
NFS Leasing	Pac-West Telecom, Inc.	Master Equipment Lease	9/3/2010			0
NFS Leasing	Pac-West Telecom, Inc.	Amendment #1 to MSA	11/15/2010			0
NFS Leasing	Pac-West Telecom, Inc.	Lease Agreement #1	9/13/2010	9/12/2013	1,659.03	0
NFS Leasing	Pac-West Telecom, Inc.	Lease Schedule #2	10/7/2010	10/6/2013	240.54	0
NFS Leasing	Pac-West Telecom, Inc.	Lease Schedule #3	11/17/2010	11/16/2013	545.40	0
NFS Leasing	Pac-West Telecom, Inc.	Lease Schedule #4	10/28/2010	10/27/2013	90.95	0
NFS Leasing	Pac-West Telecom, Inc.	Lease Schedule #5	1/25/2011	1/24/2014	1,516.40	0

Schedule 1.1(i)  
Cancelled Accounts

Customer	Address	Contract Date	Contract Name
Tandem Design, LLC		June 2009	Addendum to 8YY contract
Soundbite		July 28, 2010	8YY Amendment
Reynwood Communication, Inc.		April 23, 2010	Service Order Agreement Addendum – Marketing Fee 8YY Origination
Reliance Communications, Inc.		February 27, 2009	Service Order Agreement Addendum – Marketing Fee 8YY Origination
Novatel, Ltd.		July 1, 2009	Service Order Agreement Addendum – Marketing Fee 8YY Origination
Network Communication International		March 8, 2010	Service Order Agreement Addendum – Marketing Fee 8YY Origination
ITalk Global Communications		June 12, 2009	Service Order Agreement Addendum – Marketing Fee 8YY Origination
InterMetro Communications, Inc.		November 6, 2009	Service Order Agreement Addendum – Marketing Fee Inbound



IBDC Telecom		December 1, 2009	Service Order Agreement Addendum – Marketing Fee 8YY Origination
Free Conferencing, Inc.		May 7, 2010	Service Order Agreement Addendum – Marketing Fee Inbound
EarthLink, Inc.		April 27, 2011	Amendment No. 7 to Master Services Agreement
EarthLink, Inc.		July 20, 2009	Amendment No. 5 to Master Services Agreement
WildGate Wireless, Inc.	5280 E Beverly Rd., Bldg. C-274 Los Angeles, CA 90022		Agent Fee Agreement – 8YY Traffic
DIDWW Ireland, Ltd.			Service Order Agreement Addendum – Marketing Fee Inbound
Data Cents	129 West Coast, San Antonio, Texas 78257	April 2, 2009	Revenue Sharing Agreement
Communications Distributions, Inc.	4501 Magnolia Cove Drive, Ste 204, Kingwood, Texas 77345	May 11, 2009	Confidentiality and NonDisclosure Agreement
Broadvox, LLC		March 18, 2010	Service Order Agreement Addendum – Marketing Fee 8YY Origination
Blogtalk Radio		April 22, 2010	Service Order Agreement

			Addendum – Marketing Fee Inbound
Origination Services LLC	11442 Lake Butler Blvd., Windermere, FL 34786	February 25, 2011	Contract Reseller and Referral Agreement
Belgacom International Carrier Services SA		August 7, 2009	Service Order Agreement Addendum – Marketing Fee 8YY Origination
AOL, Inc.	22000 AOL Way, Dulles, Virginia 20166	January 29, 2010	Network Services Agreement
AOL, Inc.	22000 AOL Way, Dulles, Virginia 20166	February 2, 2010	Network Services Agreement
AOL, Inc.	22000 AOL Way, Dulles, Virginia 20166	March 31, 2011	Amendment No. 1 to Network Services Agreement
United Online, Inc.	2555 Townsgate Rd. Westlake Village, CA 91631	January 1, 2003	Service Provider Agreement (and all amendments thereto)
Base Systems, Inc.	8 Penn Center West, Suite 101 Pittsburgh, PA 15276	November 10, 2009	Service Order Agreement
Global Pops, Inc.	325 Mt. Lebanon Blvd. Pittsburgh, PA 15234		Request to Transfer Customer Responsibility
Global Pops, Inc.	325 Mt. Lebanon Blvd. Pittsburgh, PA 15234	November 16, 2005	Addendum to Master Services Agreement
Global Pops, Inc.	325 Mt. Lebanon Blvd. Pittsburgh, PA 15234	June 17, 2003	Amendment to the Managed Modem Services Agreement
Global Pops, Inc.	325 Mt. Lebanon	March 31, 2004	Addendum to



	Blvd. Pittsburgh, PA 15234		Managed Dial Access Service (Hourly) Agreement
GatorComm Solutions, LLC		January 20, 2010	Service Order Agreement Addendum – Marketing Fee 8YY Origination
UniChip, LLC	11653 El Sorrel Lane, Scottsdale, AZ 85259	November 1, 2010	Master Services Agreement
UniChip, LLC	11653 El Sorrel Lane, Scottsdale, AZ 85259	July 22, 2010	Service Order Agreement Addendum – 8YY Marketing Fee Rate Amendment
Routed Systems, Inc.		June 11, 2009	Service Order Agreement Addendum – Marketing Fee 8YY Origination
SIPGATE, Inc.		January 27, 2010	Service Order Agreement Addendum – Marketing Fee Inbound
Skype, Inc.	24/24 Boulevard Royal, L-2449 Luxembourg, Luxembourg	May 25, 2010	Reseller Agreement

## Schedule 1.2

Excluded Assets(i) – Trade or corporate names used:

<i>Name</i>	<i>Nature of Business</i>	<i>Beginning and ending dates</i>
Installnet, Inc.	Telecommunications	January 14, 2000
US Net Solutions, Inc.	Telecommunications	January 21, 2000
Pac-West Telecomm of Virginia, Inc.	Telecommunications	August 17, 2005-present
PWT Services, Inc.	Telecommunications	August 26, 2005- present
PWT of New York	Telecommunications	August 26, 2005-present

(ii) – Software Licenses

<b>Oracle Database Programs: Program</b>	<b>QTY</b>	<b>Metric</b>	<b>Level</b>	<b>Order No:</b>	<b>CSI</b>	<b>Order Date</b>	<b>Support Expiration Date</b>
Oracle Database Enterprise Edition	45	Named User Plus	Full Use	8073688	14816858	17-May-2006	14-May-2012
Programmer/2000	1	Developer	Full Use	5836240	2607706	13-May-1999	21-May-2006
Standard Management Pack	10	Named User	Full Use	5922077	2848495	01-Oct-1999	30-Sep-2000
Diagnostics Management Pack	16	Named User	Full Use	5922077	2848495	01-Oct-1999	30-Sep-2000
Tuning Management Pack	16	Named User	Full Use	5922077	2848495	01-Oct-1999	30-Sep-2000
Trans GTWY Sybase	1	Concurrent Device	Hot Backup	5924659	2856363	06-Oct-1999	06-Oct-2001
Trans GTWY Sybase	1	Concurrent Device	Full Use	5924659	2856363	06-Oct-1999	06-Oct-2001
Oracle8i Enterprise Edition	8	Concurrent Device	Full Use	5962857	2968033	27-Dec-1999	28-Dec-2001
Diagnostics Management Pack	8	Concurrent Device	Full Use	5962857	2968033	27-Dec-1999	28-Dec-2001
Tuning Management Pack	8	Concurrent Device	Full Use	5962857	2968033	27-Dec-1999	28-Dec-2001



Oracle Database Programs: Program	QTY	Metric	Level	Order No:	CSI	Order Date	Support Expiration Date
Oracle Database Enterprise Edition	234	Named User Multi Server	Full Use	6200127	3023768	29-Feb-2000	27-Feb-2002
Oracle8i Enterprise Edition	900	Power Unit RISC	Full Use	6200127	3023768	29-Feb-2000	27-Feb-2002
Partitioning	27	Named User Multi Server	Full Use	6342799	3191481	22-Nov-2000	21-Nov-2001
Partitioning	96	Named User Plus	Full Use	6773997	3652001	27-Nov-2002	26-Nov-2005
Oracle Database Enterprise Edition	433	Named User Plus	Full Use	6772167	3654541	25-Nov-2002	14-May-2012

(iii) – CLEC Certificates

Debtor	State Name	Certification	Number	Date Approved
PacWest	Alabama	CLEC/IXC	27660	11/05/05
PacWest	Delaware	CLEC	05-318	12/05/05
PacWest	Georgia	CLEC	21499	11/17/05
PacWest	Illinois	CLEC/IXC	05-0695	02/08/06
			42924	11/30/05
PacWest	Indiana	CLEC	42925	12/09/05
PacWest	Kentucky	CLEC	TFS2005-01542	10/26/05
PacWest	Louisiana	CLEC/IXC	TSP00569	11/29/05
PacWest	Massachusetts	CLEC/IXC	5-410A	10/27/05
PacWest	Minnesota	CLEC	P-5979/NA-05-1950	02/21/06
PacWest	Mississippi	CLEC	TC123218200	12/13/05
PacWest	Missouri	CLEC/IXC	LA-2006-0155	01/08/06
PacWest	New Jersey	CLEC/IXC	TE05090779	12/02/05
PacWest	New Mexico	CLEC	3446	04/30/01
PacWest	New York	CLEC/IXC	F060124000535	01/24/06
PacWest	Rhode Island	CLEC	3698	10/20/05
PacWest	Tennessee	CLEC/IXC	05-00314	01/10/06

Debtor	State Name	Certification	Number	Date Approved
nWire	Arkansas	CLEC	10-055-U	01/03/11
nWire	Oklahoma	CLEC	201000055	11/24/10
nWire	Texas	CLEC	60860	05/28/10

(iv) – Patents

Patent No.	Patent Date	Description
US 7,420,978 B2	September 2, 2008	Method and apparatus for billing voice calls over an internet protocol network according to bandwidth criteria
US 7,539,155 B1	May 26, 2009*	Centralized feature platform in a packetized network
US 7,561,520 B2	July 14, 2009	Capacity limiting platform and method
US 7,756,031 B2	July 13, 2010	Narrowband voice systems and methods
US 7,912,188 B2	March 22, 2011	Centralized feature platform in a packetized network
US 8,027,841 B2	September 27, 2011	Centralized server obtaining security intelligence knowledge by analyzing VoIP bit-stream

(v) – Patent Applications

Patent Application Pub No.	Pub Date	Description
US 2004/0136361 A1	July 15, 2004	Method and apparatus for billing voice calls over an internet protocol network according to bandwidth criteria
US 2004/0260560 A1	December 23, 2004	VoIP security intelligence systems and methods
US 2005/0271051 A1	December 8, 2005	Capacity limiting platform system and method
US 09/721,220	November 22, 2000	Centralized Feature Platform in a Packetized Network



<b>Patent Application Pub No.</b>	<b>Pub Date</b>	<b>Description</b>
US 10/696,974	October 30, 2003	Method and Apparatus for Billing Voice Calls Over and Internet Protocol Network According to Bandwidth Criteria
PCT/US 03/34380	October 31, 2003	Method and Apparatus for Billing Voice Calls Over and Internet Protocol Network According to Bandwidth Criteria
US 60/422,526*	October 31, 2002	Method and Apparatus for Billing Voice Calls Over and Internet Protocol Network According to Bandwidth Criteria
US 60/461,463*	April 9, 2003	VoIP Security Intelligence Systems and Methods

\* U.S. Provisional Patent Application

Schedule 2.1  
Assumed Liabilities

1. 2013 taxes not yet payable and secured by the Assets; and
2. Ordinary course accounts payable arising after the Petition Date:

Vendor ID	Vendor	Amount Due
360.001-5	360Networks (Usa) Inc.	\$3.80
360.001-5	360Networks (Usa) Inc.	\$1,506.85
360.001-5	360Networks (Usa) Inc.	\$18,426.76
360.001-5	360Networks (Usa) Inc.	\$2,137.71
360.001-5	360Networks (Usa) Inc.	\$3.64
ACC.001-5	ACCESS COST ENGINEERING SYSTEMS, LL	\$1,000.00
ACC.001-5	ACCESS COST ENGINEERING SYSTEMS, LL	(\$1,000.00)
ACC.001-5	ACCESS COST ENGINEERING SYSTEMS, LL	\$6,000.00
ACN.001-5	ACN Communications Services - Ca	\$4.11
ADP.001-2	ADP, INC	\$397.04
AET.001-2	Aetna	\$36,187.00
AET.002-2	Aetna	(\$31.64)
AET.002-2	Aetna	\$952.93
ALL.001-2	ALL ACCESS TELECOM	\$41,737.35
ALL.001-2	ALL ACCESS TELECOM	\$720.44
E-Simmons A	Allen C Simmons	\$67.50
ALL.002-5	Alliance Global Networks, Llc	\$853.86
ALL.003-5	Allied Waste Services	\$150.00
ALP.002-5	Alpheus Communication	\$11,387.85
ALP.002-5	Alpheus Communication	\$22,988.14
ALP.002-5	Alpheus Communication	\$13,914.89
ALP.002-5	Alpheus Communication	\$13,497.47
ALP.001-2	Alpheus Communications. LP	\$0.01
ALP.001-2	Alpheus Communications. LP	\$39,772.75
ALP.001-2	Alpheus Communications. LP	\$2,628.19
AME.001-2	AMERICAN REGISTRY FOR INTERNET NUMBERS	\$2,250.00
AME.001-2	AMERICAN REGISTRY FOR INTERNET NUMBERS	\$1,250.00
AME.002-5	American Telesis	\$698.00
AOC.001-5	AOCN.Org	\$5,719.19
ARR.001-5	Arrival Communications Inc.	\$0.01
ARR.001-5	Arrival Communications Inc.	\$0.05
ATT.007-2	AT & T	\$394.95
ATT.002-2	AT&T	\$104.86
ATT.005-2	AT&T	\$190.26
ATT.005-2	AT&T	\$91.76
ATT.005-2	AT&T	\$165.66



<b>Vendor ID</b>	<b>Vendor</b>	<b>Amount Due</b>
ATT.005-2	AT&T	\$94.78
ATT.010-5	AT&T	\$374.58
ATT.011-5	AT&T	\$0.71
ATT.016-5	AT&T	\$18.26
ATT.018-5	AT&T	\$1,238.68
ATT.018-5	AT&T	\$646.09
ATT.018-5	AT&T	\$10.00
ATT.018-5	AT&T	\$10.00
ATT.018-5	AT&T	\$7,034.25
ATT.018-5	AT&T	\$2,564.00
ATT.018-5	AT&T	\$2,410.58
ATT.018-5	AT&T	\$26.74
ATT.018-5	AT&T	\$3,248.77
ATT.018-5	AT&T	\$3,668.96
ATT.018-5	AT&T	\$46.79
ATT.018-5	AT&T	\$2,320.19
ATT.018-5	AT&T	\$14,959.20
ATT.018-5	AT&T	\$1,149.56
ATT.018-5	AT&T	\$31,957.09
ATT.018-5	AT&T	\$15,615.93
ATT.018-5	AT&T	\$13,009.05
ATT.018-5	AT&T	\$1,244.45
ATT.018-5	AT&T	\$2,844.96
ATT.018-5	AT&T	\$2,568.56
ATT.018-5	AT&T	\$1,830.19
ATT.018-5	AT&T	\$1,033.50
ATT.018-5	AT&T	\$2,059.02
ATT.018-5	AT&T	\$10.00
ATT.018-5	AT&T	\$455.88
ATT.018-5	AT&T	\$455.88
ATT.018-5	AT&T	\$457.04
ATT.018-5	AT&T	\$1,358.13
ATT.018-5	AT&T	\$10.00
ATT.018-5	AT&T	\$10.00
ATT.018-5	AT&T	\$46.79
ATT.019-5	AT&T	\$3,358.12
ATT.020-5	AT&T	\$7,761.58
ATT.020-5	AT&T	\$779.59
ATT.021-5	AT&T	\$36.00
ATT.021-5	AT&T	\$8.70
ATT.021-5	AT&T	\$2.83
ATT.021-5	AT&T	\$36.00

Vendor ID	Vendor	Amount Due
ATT.021-5	AT&T	\$8.70
ATT.021-5	AT&T	\$2.56
ATT.021-5	AT&T	\$192.59
ATT.023-5	AT&T	\$756.83
ATT.023-5	AT&T	\$229.61
ATT.023-5	AT&T	\$492.08
ATT.023-5	AT&T	\$25.60
ATT.023-5	AT&T	\$888.67
ATT.023-5	AT&T	\$185.17
ATT.023-5	AT&T	\$94.35
ATT.023-5	AT&T	\$229.61
ATT.023-5	AT&T	\$185.17
ATT.023-5	AT&T	\$492.08
ATT.023-5	AT&T	\$492.47
ATT.023-5	AT&T	\$7.60
ATI.001-5	ATI dba Eschelon Telecom Inc.	\$0.43
BAC.001-5	Backbone Communications, Inc.	\$95.14
BAC.001-5	Backbone Communications, Inc.	\$137.28
BAC.001-5	Backbone Communications, Inc.	\$178.54
BAL.001-2	BALCONES SHRED	\$80.00
BCE.001-2	Bell Canada-COGS Management	\$41,707.08
E-GILLES B	Blaine Gilles	\$2,067.86
CAL.004-5	Calaveras Telephone Company	\$2.37
CAL.004-5	Calaveras Telephone Company	\$8.67
CAL.006-5	CALIFORNIA (PUC), STATE OF	\$2.00
CAL.002-5	CALIFORNIA WATER SERV. ACCT. 6843433333	\$1,032.81
CAN.001-5	Canopco, Inc.	\$466.75
CEN.012-2	Central Telephone Co of NV	\$57.53
CEN.012-2	Central Telephone Co of NV	\$115.53
CEN.012-2	Central Telephone Co of NV	\$1,914.91
CEN.012-2	Central Telephone Co of NV	\$108.03
CEN.012-2	Central Telephone Co of NV	\$3,379.26
CEN.012-2	Central Telephone Co of NV	\$3,379.26
CEN.012-2	Central Telephone Co of NV	\$5,203.74
CEN.004-5	Centurylink	\$522.09
CEN.004-5	Centurylink	\$693.46
CEN.005-5	Centurylink	\$35,172.86
CEN.007-5	Centurylink	\$41.58
CEN.008-5	Centurylink	\$971.00
CEN.008-5	Centurylink	\$4,466.75
CEN.008-5	Centurylink	\$13,763.20
CEN.008-5	Centurylink	\$9,960.58



<b>Vendor ID</b>	<b>Vendor</b>	<b>Amount Due</b>
CEN.008-5	Centurylink	\$374.14
CEN.008-5	Centurylink	\$35,172.86
CEN.008-5	Centurylink	\$6,404.61
CEN.010-5	Centurylink	\$229.60
CON.001-5	Consolidated Communications	\$0.43
CON.001-5	Consolidated Communications	(\$886.45)
CON.001-5	Consolidated Communications	\$2.71
CON.001-5	Consolidated Communications	\$185.37
CON.001-5	Consolidated Communications	\$4.02
CRA.001-5	CRAIG A. MARKS PLC	\$468.00
CTC.001-2	CT Corporation System	\$64.32
DEL.001-5	Delta Office Systems & Furnishings	\$130.00
EAR.001-5	Earthlink, Inc.	\$1,314.69
EAR.001-5	Earthlink, Inc.	\$14,411.27
EAR.001-5	Earthlink, Inc.	\$426.35
EQU.002-2	Equinix Canada, Inc	\$9,698.44
EQU.001-2	Equinix Services, Inc	\$29,497.50
FIB.001-5	Fibercloud	\$450.00
FPL.001-2	FPL FiberNet LLC./Grande Communications	\$22,985.00
FRO.001-5	Frontier Communications	\$18.44
FRO.001-5	Frontier Communications	\$498.00
FRO.001-5	Frontier Communications	\$4,740.70
FRO.002-5	Frontier Communications	\$12.50
GLO.003-2	GLOBAL POPs	\$257.01
GLO.004-5	Global Telecom & Technology	\$4,332.73
GLO.004-5	Global Telecom & Technology	\$2,929.00
GLO.004-5	Global Telecom & Technology	\$3,790.04
HAP.001-5	Happy Valley Telephone Company	\$15.07
HOR.001-5	Hornitos Telephone Co.	\$13.49
INT.011-5	Integra / Electric Lightwave	\$23,852.51
INT.007-5	Intelepeer, Inc.	\$2,779.18
INT.009-5	Intrado Informed Response	\$5,995.34
KER.001-5	Kerman Telephone Company	\$3.33
KER.001-5	Kerman Telephone Company	\$62.90
E-SCHROEDERK	Kihm Schroeder	\$4,560.00
E-BEGGS K	Kirk Beggs	\$1,262.24
LEV.004-2	Level 3 / Broadwing	\$2,323.33
LEV.006-2	Level 3 / ICG Communications	\$3,673.25
LEV.005-2	Level 3 / Looking Glass	\$944.06
LEV.008-2	Level 3 / Progress Telecom	\$3,431.59
LEV.008-2	Level 3 / Progress Telecom	\$3,431.59
LEV.007-2	Level 3 / Wiltel	\$483.74

Vendor ID	Vendor	Amount Due
LEV.007-2	Level 3 / Wiltel	\$41,796.76
LEV.010-5	Level 3 Communications	\$3,654.71
LEV.010-5	Level 3 Communications	\$3,960.53
LIB.001-5	Libertybell	\$0.06
MAT.001-5	Matrix Telecom	\$0.35
MAT.001-5	Matrix Telecom	\$1.43
MCI.001-5	MCI	\$0.05
MCI.001-5	MCI	\$0.38
MCI.003-5	MCI Metro	\$30.23
MCI.003-5	MCI Metro	\$0.14
MCI.003-5	MCI Metro	\$28.56
MCI.003-5	MCI Metro	\$10.27
MCI.003-5	MCI Metro	\$0.72
MID.001-5	Mid America Computer Corp.	\$0.01
MID.001-5	Mid America Computer Corp.	\$0.08
MIX.001-5	Mix Networks	\$498.40
MPO.001-5	Mpower Communications	\$0.03
MPO.001-5	Mpower Communications	\$0.30
MPO.001-5	Mpower Communications	\$0.02
MPO.001-5	Mpower Communications	\$0.02
MPO.001-5	Mpower Communications	\$0.22
MPO.001-5	Mpower Communications	\$2.17
MPO.001-5	Mpower Communications	\$0.04
NES.001-5	Nestle PureLife Direct	\$41.85
NEU.001-2	Neustar, Inc	\$5,000.00
NEU.001-2	Neustar, Inc	\$400.00
NEU.002-5	Neustar, Inc.	\$1,300.00
NEU.003-5	Neustar, Inc.	\$0.74
NEU.003-5	Neustar, Inc.	\$0.39
NEU.003-5	Neustar, Inc.	\$66.26
NEU.003-5	Neustar, Inc.	(\$2,908.16)
NEU.003-5	Neustar, Inc.	\$3.03
NEU.003-5	Neustar, Inc.	\$521.35
NEU.003-5	Neustar, Inc.	\$5.72
NEU.003-5	Neustar, Inc.	\$3,367.00
NAN.001-2	North American Numbering Plan	\$25.00
NAN.001-2	North American Numbering Plan	\$25.00
ONE.003-5	One Communications	\$207.90
ONE.003-5	One Communications	(\$7,817.66)
ONE.003-5	One Communications	(\$3,695.02)
PEE.002-5	Peerless Network	\$150.93
PEE.002-5	Peerless Network	\$213.93



<b>Vendor ID</b>	<b>Vendor</b>	<b>Amount Due</b>
PEE.002-5	Peerless Network	\$240.38
PEE.002-5	Peerless Network	\$6.56
PEE.002-5	Peerless Network	\$9.45
PIL.001-5	Pilot	\$12,692.03
PON.001-5	Ponderosa Telephone Company	\$415.46
QWE.002-5	Qwest	\$337.50
QWE.002-5	Qwest	\$24.05
QWE.002-5	Qwest	\$337.50
QWE.001-2	Qwest / Onfiber	\$3,330.00
QWE.004-5	Qwest Communications	\$2,036.44
E-Green R	Robert M Green	\$26.74
SEB.001-5	Sebastian	\$0.12
SMS.001-2	SMS/800, Inc.	\$417.62
SOU.001-5	Southern California Edison Co.	\$12,310.00
E-CHAPMAN S	Stephen Chapman	\$202.88
SUN.001-2	SunLife	\$1,335.82
TAR.001-2	Targus/NEUSTAR	\$1,274.28
TDI.001-2	TDIndustries	\$356.50
TEL.001-5	Telekenex	\$0.01
TEL.001-5	Telekenex	\$8.36
TEL.002-5	Telepacific Communications	\$42.28
TEL.002-5	Telepacific Communications	\$7.44
TEL.002-5	Telepacific Communications	\$10.46
TEL.010-5	TelePacific Communications	\$20,623.00
TEL.010-5	TelePacific Communications	\$20,623.00
TEL.008-5	TELESPHERE	\$17,801.48
TEL.005-5	Teliix Inc.	\$584.89
TEL.006-5	Telscape Communications	\$0.82
TRA.002-2	The Travelers Insurance Group	\$36,731.00
TIM.001-2	Time Warner Cable	\$242.89
TOA.001-5	TOAST.NET	(\$350.00)
TRA.003-5	Transaction Network Services	\$60,076.36
TRA.003-5	Transaction Network Services	\$32,310.79
TWA.001-5	TW Telecom	\$15,124.00
TWA.001-5	TW Telecom	\$0.01
TWA.001-5	TW Telecom	\$2.86
TWA.001-5	TW Telecom	\$60.54
TWA.001-5	TW Telecom	\$1.23
TWA.001-5	TW Telecom	\$2.97
TWA.001-5	TW Telecom	\$1.87
TWA.001-5	TW Telecom	\$0.55
TWA.001-5	TW Telecom	\$3.10

Vendor ID	Vendor	Amount Due
UNI.003-5	UNITED PARCEL SERVICE - UPS	\$106.01
UNI.003-5	UNITED PARCEL SERVICE - UPS	\$46.57
UNI.003-5	UNITED PARCEL SERVICE - UPS	\$87.93
UNI.003-5	UNITED PARCEL SERVICE - UPS	\$125.56
UNI.003-5	UNITED PARCEL SERVICE - UPS	\$172.08
UNI.001-2	Universal Service Administrative Co	\$14,310.99
UNI.001-2	Universal Service Administrative Co	\$813.37
UNI.001-2	Universal Service Administrative Co	\$813.37
UNI.004-5	UNIVERSAL SERVICE ADMINSTRATIVE COMPANY	\$9,061.31
UNI.004-5	UNIVERSAL SERVICE ADMINSTRATIVE COMPANY	\$9,061.31
UNI.004-5	UNIVERSAL SERVICE ADMINSTRATIVE COMPANY	\$2,324.40
USC.001-2	US COLO LLC	\$4,480.00
UTI.001-5	Utility Telephone Inc.	\$102.54
VAL.001-5	Valley Wide Aire	\$1,764.90
VAL.001-5	Valley Wide Aire	\$1,434.90
VAL.001-5	Valley Wide Aire	\$2,580.00
VER.001-2	Verizon	\$115.66
VER.002-2	Verizon	\$27.57
VER.002-2	Verizon	\$28.74
VER.004-5	Verizon	\$411.42
VER.004-5	Verizon	\$446.86
VER.004-5	Verizon	\$511.39
VER.004-5	Verizon	\$1.82
VER.004-5	Verizon	\$2.04
VER.004-5	Verizon	\$4.60
VER.004-5	Verizon	\$2,863.78
VER.004-5	Verizon	\$1,069.44
VER.004-5	Verizon	\$1,413.40
VER.004-5	Verizon	\$1,069.44
VER.004-5	Verizon	\$4,920.59
VER.004-5	Verizon	\$71.62
VER.004-5	Verizon	\$66.56
VER.004-5	Verizon	\$1,810.04
VER.004-5	Verizon	\$468.42
VER.004-5	Verizon	\$23.80
VER.004-5	Verizon	\$1,191.66
VER.004-5	Verizon	\$21,126.95
VER.004-5	Verizon	\$170.92
VER.004-5	Verizon	\$364.58
VER.004-5	Verizon	\$119.50
VER.004-5	Verizon	\$4,143.04
VER.004-5	Verizon	(\$2,641.19)



<b>Vendor ID</b>	<b>Vendor</b>	<b>Amount Due</b>
VER.004-5	Verizon	\$4,401.12
VER.004-5	Verizon	(\$2,805.72)
VER.004-5	Verizon	\$433.81
VER.004-5	Verizon	\$340.94
VER.004-5	Verizon	\$224.44
VER.004-5	Verizon	\$3.61
VER.004-5	Verizon	\$2,228.56
VER.004-5	Verizon	\$584.48
VER.004-5	Verizon	\$603.50
VER.004-5	Verizon	\$316.97
VER.004-5	Verizon	\$426.75
VER.004-5	Verizon	\$1.89
VER.004-5	Verizon	\$19.49
VER.004-5	Verizon	\$3.80
VER.004-5	Verizon	\$5.71
VER.004-5	Verizon	\$218.93
VER.004-5	Verizon	\$362.52
VER.004-5	Verizon	\$1,456.16
VER.004-5	Verizon	\$2,317.52
VER.004-5	Verizon	\$543.78
VER.004-5	Verizon	(\$543.78)
VER.004-5	Verizon	\$718.68
VER.004-5	Verizon	(\$718.68)
VER.004-5	Verizon	\$543.78
VER.004-5	Verizon	(\$543.78)
VER.004-5	Verizon	\$2,501.98
VER.006-5	Verizon	\$66.53
VER.009-5	Verizon	\$45.27
VER.009-5	Verizon	\$14.88
VER.009-5	Verizon	\$4.96
VER.010-5	Verizon California	\$465.37
VER.010-5	Verizon California	\$23.32
VER.010-5	Verizon California	\$2,897.58
WIN.001-2	WINDSTREAM	\$7,669.57
WIN.002-5	Windstream Communications	\$40.68
WIN.002-5	Windstream Communications	\$216.86
XCN.001-2	XConnect	\$5,424.34
XCN.001-5	XConnect	\$64.23
XCN.001-5	XConnect	\$132.35
XCN.001-5	XConnect	(\$207.90)
XOC.001-5	XO Communications, Inc.	\$22,847.89
XOC.002-5	XO Communications, Inc.	\$0.01

<b>Vendor ID</b>	<b>Vendor</b>	<b>Amount Due</b>
XOC.002-5	XO Communications, Inc.	\$0.50
XOC.002-5	XO Communications, Inc.	\$0.02
XOC.002-5	XO Communications, Inc.	\$0.02
XOC.002-5	XO Communications, Inc.	\$0.09
XOC.003-5	XO Communications, Inc.	\$1,375.95
XOC.003-5	XO Communications, Inc.	\$1.18
XOC.003-5	XO Communications, Inc.	\$5.77
ZAY.001-5	Zayo Group, LLC	\$4,661.97
ZAY.001-5	Zayo Group, LLC	\$161.40
ZAY.001-5	Zayo Group, LLC	\$8,175.82
ZAY.001-5	Zayo Group, LLC	\$1,700.00
ZEU.002-2	Zeus Wireless, LLC	\$1,214.97
ZEU.002-2	Zeus Wireless, LLC	\$4,172.45
<b>Total Accounts Payable</b>		<b>\$1,119,164.93</b>



Schedule 2.2  
Essential Cure Amounts

(A) Interconnect Agreements

Vendor	State	Direct Connect	Cure Amount (\$)
CenturyLink	AZ	Yes	81,830.28
CenturyLink	CO	Yes	29,091.68
CenturyLink	ID	Yes	6,233.82
CenturyLink	OR	Yes	44,533.06
CenturyLink	UT	Yes	28,749.46
CenturyLink	WA	Yes	77,018.53
CenturyLink	NV	Yes	69,577.76
AT&T	CA	Yes	0.00
AT&T	NV	Yes	0.00
AT&T	TX	Yes	0.00
			<b>337,034.59</b>

(B) Local Circuit Cure Costs<sup>4</sup>

Vendor	State	Cure Amount (\$)
CenturyLink	AZ	8,981.65
CenturyLink	CO	14,425.95
CenturyLink	ID	2,424.74
CenturyLink	OR	20,129.10
CenturyLink	UT	6,387.23
CenturyLink	WA	29,452.83
CenturyLink	NV	3,591.84
AT&T *	CA	931,117.27
AT&T	NV	23,294.50
AT&T	TX	174,725.16
		<b>1,039,805.11</b>

\*The AT&T cure costs (Interconnection or tariff) may be partially offset by a \$300,000 adequate assurance deposit provided by PacWest to AT&T during the course of Pac-West's earlier bankruptcy.

<sup>4</sup> Tariffed costs not arising under Inter Connection Agreement

Schedule 3.1 (c)

Absence of Violations.

NONE



## Schedule 3.1 (d)

Government Permits – List of Regulatory Filings Still to be Filed

STATES	FORM	AGENCY	DESCRIPTION	TYPE	DUE DATE
Arizona	Annual Report	AZ Corp Commission - Utility Division		A	05.01.13
Arizona	Estimate of Gross Revenues - Intrastate 2012	ACC Utilities Division		A	01.10.13
California	Gross Revenues	CPUC		A	07.01.13
Colorado	Annual CLEC Report	CO PUC		A	04.30.13
Colorado	Intrastate Gross Operating Revenue	CO Dept. of Revenue		A	05.01.13
Colorado	High Cost Support Mechanism Worksheet	DORA		A	03.31.13
Federal	Peering Partners	USAC	499 - A	A	04.01.13
Federal	Pac-West -	USAC	499 - A	A	04.01.13
Federal	nWire	USAC	499 - A	A	04.01.13
Federal	UniPoint Enhanced Services	USAC	499 - A	A	04.01.13
Idaho	Gross Operating Revenues	IPUC		A	04.01.13
Massachusetts	Return and Revenue Statement	Telco and Cable		A	05.01.13
Michigan	Intrastate Telecommunications Registration	LARA		A	02.08.13
Missouri	Annual Report	MPU		A	05.01.13
Nevada	USF Carrier Remittance	NVUSF	Fiscal Year 2013	A	04.15.13
Nevada	Annual Report 2012	NV PUC		A	
New Jersey	Annual Report	NJ BPU		A	04.01.13
New Jersey	Intrastate Gross Operating Revenues	NJ BPU		A	03.31.13
Oregon	Annual Report L and C	OPUC		A	01.31.13
Utah	Report of Gross Revenue	UT PSC		A	04.15.13
Washington	Annual Report	WUTC		A	05.01.13

Schedule 3.1(e)

Consents and Approvals

Federal Communications Commission  
Arizona Corporation Commission  
California Public Utilities Commission  
Colorado Public Utilities Commission  
Idaho Public Utilities Commission  
Nevada Public Utilities Commission  
Oregon Public Utility Commission  
Public Utility Commission of Texas  
Public Service Commission of Utah  
Washington Utilities and Transportation Commission



Schedule 3.2 (b)

Taxes

The following represents scheduled and asserted claims filed by taxing authorities representing pre-petition taxes with a lien secured by the Assets.

<i>Taxing Authority</i>	<i>Consideration for Claim</i>	<i>Amount of Claim</i>
Aldine ISD-Tax Office Houston, Texas	Ad valorem tax	\$4,350.33
Bexar County	Ad valorem tax	\$13,610.44
Dallas County Tax Office	Ad valorem tax	\$64,947.03
Harris County	Ad valorem tax	\$67,199.67
Los Angeles County	Ad valorem tax	\$394.31 Estimated
Travis County	Ad valorem tax	\$5,720.75
San Joaquin County Tax Collector	Ad valorem tax	\$118,870.71
Los Angeles County Treasurer and Tax Collector	Real Property <sup>5</sup> and Ad Valorem Tax	\$71,590.78

<sup>5</sup> Note: Debtors own no real property

Schedule 3.2 (c)  
Investigations, Claims and Assessments for Regulatory Fees

USAC post-petition: \$27,790.11

USAC pre-petition outstanding:

\$284,420.92

\$ 2,452.96

\$6,803.77

California High Cost Fund-B \$9,318.35  
(prepetition)

California Teleconnect \$2,076.70  
(prepetition)



Schedule 3.3 (a)

*See* Schedule 1.1(b)

Schedule 3.4  
Intellectual Property

*See* Schedule 1.1(d)



Schedule 3.5  
Pending Litigation

<b>Caption of Suit and Case Number</b>	<b>Nature of Proceeding</b>	<b>Court or Agency and Location</b>	<b>Status of Disposition</b>
<b><i>Pac-West Telecomm</i></b>			
IBDC vs. Pac-West Telecomm, Inc., Case No. 12-1544-E	Breach of contract	Common Wealth of Massachusetts	Pending
DSET, Inc. v. Pac-West Telecomm, Inc., Case No. 1:11-cv-02041-JOF	Breach of contract	District Court-Northern District of Georgia- Atlanta Division	Pending
Joe Shields vs. Pac-West Telecom, Inc., et al., Case No. 4:13cv518	Suit for damages regarding "Robocalls"	U.S. District Court-Southern District of Texas	Pending
Data Processing Air Corporation vs Pac-West Telecomm, Inc., Case No. BC496752	Breach of contract	Superior Court of California-County of Los Angeles	Pending
CA-Mission Street Limited Partnership vs. Pac-West Telecomm, Inc., et al., Case No. CUD-13-644309	Unlawful detainer	Superior Court of California-County of San Francisco	Pending
Pac-West/Level 3 v. Qwest Corporation, Qwest AZ, Case Nos. T-01051B-05-0495 and T-03693A-05-0495	Complaint	Arizona Corporation Commission	Pending
Pac-West Telecomm, Inc. v. Qwest Corporation, Qwest-WA, Case No. UT-053036	Tariff refund	Washington Utilities and Transportation Commission	Pending
Pac-West Telecomm, Inc. Comcast, Case No. C0709010	Dispute on charges for termination of services and findings of violation of PU Code Section 702	Public Utilities Commission-California	Pending
<b><i>UniPoint Enhanced Services</i></b>			
UniPoint Enhanced Services, Inc. vs. iTalk, Case No. D-1-GN-12-001909	Breach of contract regarding sales tax	261st District Court, Travis County, Texas	Pending
<b><i>Peering Partners Communications, LLC</i></b>			
Momentum Telecom, Inc. vs. Peering Partners Communications, LLC;	Breach of contract regarding transition MOU arising out of	District Court- Clark County, Nevada	Pending

Caption of Suit and Case Number	Nature of Proceeding	Court or Agency and Location	Status of Disposition
UniPoint Holdings, Inc., Case No. A-11-644286-B	acquisition of CommPartners		
<i>UniPoint Services, Inc.</i>			
Global NAPs, Inc. v. Verizon New England, et al; Unipoint Services, Inc; Peering Partners Communications, LLC (Objectors), Case No. 02-cv-12489-RWZ		U.S. District Court-District of Massachusetts	Pending
<i>UniPoint Holdings, Inc.</i>			
Aldine Independent School District vs. UniPoint Holdings, Inc., Case No. 2013-06131	Tax suit	333rd District Court, Harris County, Texas	Pending
Momentum Telecom, Inc. vs. Peering Partners Communications, LLC; UniPoint Holdings, Inc., Case No. A-11-644286-B	<i>See above</i>	District Court- Clark County, Nevada	Pending
ZZ Two, Ltd. vs. UniPoint Holdings, Inc., Case No. C-1-CV-13-002378	Suit for damages to leased facility	County Court, No. 2, Travis County, Texas	Pending
Grande Communications vs. UniPoint Holdings, Inc., Case No. D-1-GN-11-001415	Breach of contract	201st District Court, Travis County	Settled but settlement payments not completed



Schedule 3.8  
Deposits and Pre-Paid Items

*See* Schedule 1.1 (a)(i) Adequate Assurance Deposits as of June 21, 2013

Schedule 3.9 (a)  
Pac-West Telecomm, Inc. CLEC Certifications

State Name	Certification	
Alabama	CLEC/IXC	
Arizona	CLEC/IXC	
California	CLEC/IXC	
Colorado	CLEC/IXC	
Delaware	CLEC	
District of Columbia	Access	
Florida	Price List	
Georgia	CLEC	Interim for CLEC and Active for IXC
Idaho	CLEC/IXC	
Illinois	CLEC/IXC	
Indiana	CLEC	
Kansas	Local	
Kentucky	CLEC	
Louisiana	CLEC/IXC	
Massachusetts	CLEC/IXC	
Michigan	VoIP	
Minnesota	CLEC	
Mississippi	CLEC	
Missouri	CLEC/IXC	
Nevada	CLEC	
New Jersey	CLEC/IXC	
New Mexico	CLEC	
New York	CLEC/IXC	
North Carolina	Price List	
Ohio	Access	
Oregon	Price List	
Pennsylvania	Access	
Rhode Island	CLEC	
Tennessee	CLEC/IXC	
Texas	CLEC	
Utah	Price List	
Virginia	Access	
Washington	Price List	
Wisconsin	Access	



Schedule 3.9 (a) – continued  
nWire, LLC CLEC Certifications

State Name	Certification	
Arkansas	CLEC	
Oklahoma	CLEC	
Texas	CLEC	

Tex-Link Communications, Inc., CLEC Certifications

State Name	Certification	
Texas	CLEC	

FCC 214 Authorization  
Pac-West Telecomm Inc  
FRN:0001735224  
File Number: ITC-T/C-20111006-00317

Schedule 3.9(b) FCC or State PUC Complaints, Petitions or Proceedings

<b>Caption of Suit and Case Number</b>	<b>Nature of Proceeding</b>	<b>Court or Agency and Location</b>	<b>Status of Disposition</b>
Pac-West/Level 3 v. Qwest Corporation, Qwest AZ, Case Nos. T-01051B-05-0495 and T-03693A-05-0495	Complaint	Arizona Corporation Commission	Pending
Pac-West Telecomm, Inc. v. Qwest Corporation, Qwest-WA, Case No. UT-053036	Tariff refund	Washington Utilities and Transportation Commission	Pending
Pac-West Telecomm, Inc. Comcast, Case No. C0709010	Dispute on charges for termination of services and findings of violation of PU Code Section 702	Public Utilities Commission-California	Pending



Schedule 3.9(b)  
Regulatory Restrictions

*See* Schedule 3.2(a)

Schedule 3.9(c)  
Regulatory Fee Status

*See* Schedule 3.2(a)



## Schedule 3.10

Leases

Lease Agreement and Amendments to the Lease Agreement dated January 15, 2010 for office space at 6500 River Place Blvd., Bldg. 2, Ste. 200, between MLIC Asset Holding LLC and UniPoint Holdings, Inc. with term expiring May 31, 2015.

Colocation, point-of-presence and network related leases/licenses are listed at Schedule 1.1 (e).

## (i) Equipment Leases

Vendor Name	Debtor Affiliation	Agreement	Lease Start Date	End Date
NFS Leasing	Pac-West Telecomm, Inc.	Master Equipment Lease	9/3/10	
NFS Leasing	Pac-West Telecomm, Inc.	Amendment #1 to MSA	11/15/10	
NFS Leasing	Pac-West Telecomm, Inc.	Lease Agreement #1	9/13/10	9/12/13
NFS Leasing	Pac-West Telecomm, Inc.	Lease Schedule #2	10/7/10	10/6/13
NFS Leasing	Pac-West Telecomm, Inc.	Lease Schedule #3	11/17/10	11/16/13
NFS Leasing	Pac-West Telecomm, Inc.	Lease Schedule #4	10/28/10	10/27/13
NFS Leasing	Pac-West Telecomm, Inc.	Lease Schedule #5	1/25/11	1/24/14

Schedule 3.11 (a)  
Supplemental Agreements

Executive Employment Agreement, Exhibit A IP License and Assignment Agreement, Exhibit A-1, Exhibit A-2, and Exhibit B of the Agreement dated June 28, 2010, by and between Pac-West Telecomm, Inc. and Matthew Krokosz.

Employment Agreement dated January 31, 2011 between Pac-West Telecomm, Inc. and Matthew D. Krokosz.

Executive Employment Agreement, Exhibit A IP License and Assignment Agreement, Exhibit A-1, Exhibit A-2, and Exhibit B of the Agreement dated June 28, 2010, by and between Pac-West Telecomm, Inc. and Victor Anthony Bozzo.



Schedule 3.12  
Compliance with Laws

NONE.

Schedule 3.13

Brokers, Finders, etc.

NONE.



**MANAGEMENT SERVICES AGREEMENT**

**THIS MANAGEMENT SERVICES AGREEMENT** (the "Agreement") is made this [●] day of [●], 2013 by and between (i) TNCI Operating Company LLC, a Delaware limited liability company ("Manager"), and (ii) UPH Holdings, Inc., a Delaware corporation and debtor-in-possession, Pac-West Telecomm, Inc., a Delaware corporation and debtor-in-possession, nWire, LLC, a Texas limited liability company and debtor in possession, Unipoint Holdings, Inc., a Delaware corporation and debtor-in-possession, Peering Partners Communications Holdings, LLC, a Texas limited liability company and debtor-in-possession, Unipoint Services, Inc., a Texas corporation and debtor-in-possession, Unipoint Enhanced Services, Inc., a Texas corporation and debtor-in-possession, and Tex-Link Communications, a Delaware corporation and debtor-in-possession (collectively, "Sellers"). Sellers and Manager are referred to individually in this Agreement as a "Party" and, collectively as the "Parties."

**WITNESSETH:**

A. Sellers and Manager have entered into an Asset Purchase Agreement dated as of [●], 2013 (the "Asset Purchase Agreement") whereby Manager has agreed to purchase the Assets (as defined in the Asset Purchase Agreement) and assume the liabilities described in Section 2.1 thereof from Sellers.

B. On [●], 2013, the Bankruptcy Court entered the Sale Order, pursuant to which, among other things, the Asset Purchase Agreement and this Agreement were approved by the Bankruptcy Court presiding over the Chapter 11 cases of the Sellers.

C. The Parties acknowledge and agree that certain Regulatory Approvals must be obtained before certain of the assets of Sellers may be transferred to Manager and that Sellers have retained *de facto* and *de jure* control of each of such assets pending receipt of the applicable Regulatory Approval(s) required to transfer such assets.

D. In order to assure uninterrupted operation of the Business pending issuance of the Regulatory Approvals, Sellers and Manager desire to enter into this Agreement for the purpose of establishing the terms under which Manager will, in a manner consistent with applicable federal, state and local laws and, at the direction and control (*de jure* and *de facto*) of Sellers, manage the Sellers' business operations (the "Business") from and after the Initial Closing (the "Effective Date") pending consummation of the Final Closing under the Asset Purchase Agreement.

**NOW, THEREFORE**, in consideration of the above recitals and mutual promises and other good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the approval of the Bankruptcy Court, the Parties, intending to be legally bound, agree as follows:

1. Definitions; Conflicts. Any capitalized term not otherwise defined in this Agreement shall have the meaning assigned to such term in the Asset Purchase



Agreement. In the event of any conflict between the terms of this Agreement and the Asset Purchase Agreement, the provision of the Asset Purchase Agreement shall control.

2. Appointment. On the terms set forth in this Agreement, Sellers hereby engage Manager as its sole and exclusive manager of the Business, and Manager hereby accepts such sole and exclusive engagement.

3. Duties and Authority of Manager.

(a) Subject to the provisions of Section 5 of this Agreement, and subject to Sellers' continued ownership and control of those Assets that have not been transferred pursuant to the Asset Purchase Agreement, during the Term (as defined below) Manager shall have the power, authority and responsibility to conduct and manage the Business in the ordinary course of business, provided that Manager's power, authority and responsibility shall be limited to the following:

- (i) subject to Sellers' prior consent, negotiating, entering into and/or terminating Sellers' agreements, leases, contracts, documents and other instruments;
- (ii) designating tasks to be performed by Sellers' employees and instructing and overseeing Sellers' employees in the manner, means and method of accomplishing such tasks; provided, however, that: (A) nothing contained herein or any action taken by Manager pursuant to this Agreement shall be deemed to constitute Manager as the employer of any employees of Sellers; and (B) Manager shall not, without the consent of Sellers, hire, terminate, or discharge any of Sellers' employees;
- (iii) planning and completing preparatory tasks for the transition, integration and migration of the Business into Manager's ongoing operations, and managing Sellers' employees with respect to same;
- (iv) managing Sellers' existing contracts with third parties, including making timely payments due under such contracts;
- (v) sending bills and invoices to Sellers' customers and other third parties who owe Sellers money (including the Unbilled Revenue) and timely collecting Sellers' accounts receivable;
- (vi) except for the Excluded Expenses (as defined below), paying all expenses associated with operating the Business, including without limitation, all of Sellers' employee payroll, benefits and all taxes relating to its employees who are solely and directly employed in the Business and the fees and expenses of the consultant(s) listed on Schedule 3(a)(vi) hereto (collectively, the "Payroll and



Consultant Expenses”); provided, that, for the avoidance of doubt, Payroll and Consultant Expenses shall not include any retention bonuses or severance or termination amounts payable to employees or consultant (whether resulting from contractual or statutory requirements, including severance requirements under ERISA or the WARN Act, payments relating to COBRA, or similar Federal or state severance or benefits requirements);

- (vii) assisting the Sellers in the preparation of monthly operating reports as required by the Office of the United States Trustee and the cash collateral orders entered in the Chapter 11 Cases; and
- (viii) such other duties as may be otherwise agreed to by Manager and Sellers.

(b) The Parties mutually expect and agree that Manager will use reasonable efforts to optimize the networks and business operations of Sellers, and to realize all reasonable achievable network and operational savings and efficiencies, and Sellers’ consent to actions referenced in Section 3(a) above that are undertaken for such purposes shall not be unreasonably refused. Notwithstanding the foregoing, Manager shall take no action in conflict with any provision of the Asset Purchase Agreement without Sellers’ consent.

(c) The Parties agree that Manager shall request Sellers’ consent to the actions referenced in Sections 3(a) and 3(b) above in writing to Blaine Gilles, the General Manager of Pac-West Telecomm, Inc. (the “Sellers’ Representative”). Unless the Sellers’ Representative refuses in writing (including by electronic mail) to grant consent within three (3) business days of receipt of a request for consent by Manager, such consent will be deemed granted.

(d) Without limiting the obligations of the Manager under Section 2.1 of the Asset Purchase Agreement, Manager shall be responsible for the payment of all expenses associated with the operation of the Business, including without limitation, Payroll and Consultant Expenses, that become due on or after the Effective Date and until the Final Closing except for: (i) expenses for goods and services rendered to Sellers prior to the Petition Date, (ii) in accordance with Section 17 hereof, Sellers’ attorney and other professional fees and any brokerage or other consultant fees, and (iii) fees due to the Office of the United States Trustee (collectively the “Excluded Expenses”).

(e) Manager and Sellers will promptly advise the other of any material information obtained in connection with the exercise of the Parties respective duties under this Agreement, which information is reasonably necessary for Manager or Sellers, as the case may be, to comply with any requirements under applicable law or under any contracts to which any Seller is a party.



(g) Nothing contained in this Agreement is intended to give Manager: (i) any right which would constitute a transfer of *de jure* or *de facto* "control" (as defined under applicable law) by Sellers of any of the Assets; or (ii) any right not expressly granted herein. The services provided by Manager under this Agreement are not intended to materially diminish or restrict any Seller's ability to comply with its obligations under applicable law or before the Federal Communication Commission (the "FCC") or any applicable state regulatory authority of competent jurisdiction. This Agreement shall not be construed to materially diminish or interfere with any Seller's ability to comply with the rules, regulations or directives of any governmental body.

4. Manager Compensation.

(a) As consideration for Manager providing Sellers the management services described herein, Sellers agree that Manager shall be entitled to all revenue from the Business that is generated during the Term (the "Management Fee"); provided, that: (i) to the extent that the operating revenues of the Business during the Term exceed the expenses, such Management Fee shall be limited to ninety percent (90%) of such net profits, and the Sellers shall be entitled to the remaining ten percent (10%), subject to the last sentence hereof, (ii) after the Final Closing, Manager shall be entitled to retain one hundred percent (100%) of the net profits, and (iii) the operating revenues that form the basis of such calculation shall not include the Accounts Receivable conveyed to Buyer at the Initial Closing or, following any Interim Closing, the Accounts Receivable conveyed at such Interim Closing. Within forty-five (45) days following the end of the Term, Manager shall determine the net profits for the Business during the Term, which shall be equal to the total amount of all revenue minus all amounts paid by the Manager in accordance with Section 3(d) above. The Manager shall submit its determination of net profits to John Palmer, the financial advisor to the Sellers (the "Financial Advisor"), for his review and approval. The Manager will provide to the Financial Advisor all such records as he may reasonably request in connection with his review of the Manager's determination of the Net Profits. Manager shall cooperate with Financial Advisor in good faith in order to resolve any objections that the Financial Advisor may have with respect to the Manager's calculation of the net profits. Promptly after the Financial Adviser's approval of the net profit amount or agreement as to such amount following discussions with the Manager, the Manager shall pay to the Seller its ten (10%) percent portion thereof.

(b) Manager may, at its discretion, establish new bank accounts, including new lock boxes, for receipt of all revenues associated with the operation of the Business as of the Effective Date and thereafter, and Sellers shall provide such consents and instructions to its financial institutions as are required to redirect such revenues to such new account(s).

5. Duties and Authority of Sellers.

(a) During the Term and subject to the Asset Purchase Agreement, Sellers shall perform such actions as reasonably requested by Manager without the expenditure of any money, but shall, subject to Sections 3(a) and 3(b) above, retain all rights and



powers with respect to the Business that are not delegated to Manager, including, without limitation, the following:

- (i) the right to determine and carry out policy decisions for the Business;
  - (ii) the right to reward, promote, reassign, evaluate and determine the wages, hours, terms and conditions of employment of Sellers' employees, the right to terminate any employee and to resolve and decide employee grievances and disputes; provided, that Sellers shall not, without first consulting with Manager, take any action with respect to the Sellers' employees that might be disruptive to the Business or increase the compensation or benefits provided to the Sellers' employees in the aggregate or otherwise conflict with Section 3(a) above;
  - (iii) with the assistance of the Manager, the ultimate responsibility for compliance with the Laws of any Governmental Authority applicable to the Business, including the filing of any required applications and reports, until such time as the affected portion of the Business is transferred to Purchaser at the applicable Closing pursuant to the Asset Purchase Agreement;
  - (iv) the submission of the monthly operating reports due to the Office of the United States Trustee to any creditor or party in interest who is entitled to receive such reports; and
  - (v) access to all of the assets, including but not limited to all facilities and equipment, used in the Business.
- (b) Sellers shall immediately notify Manager of, and provides copies of, any and all material notices, complaints, inquiries, actions, proceedings, suits or other correspondence received by Sellers from any governmental authority (including, without limitation, any complaints of any customer of the Business made to a governmental authority).
- (c) Sellers shall cooperate fully with Manager in obtaining any Regulatory Approvals required to complete the transactions contemplated by the Asset Purchase Agreement, including without limitation by providing any necessary information and signatures and promptly resolving any prior failures by Sellers to comply with any governmental authorization, license, certificate, tariff, or other permit.
- (d) Sellers shall consider all recommendations made by Manager with respect to the operation of the Business and, if Sellers concurs with such recommendations in its reasonable discretion, Manager shall implement same in good faith.

(e) At its discretion and expense, any Seller may conduct periodic audits (during business hours, upon reasonable notice and in a manner so as not to interfere unreasonably with the operation of the Business) of Manager's management of the Business to assure compliance in all material respects with the Laws of any Governmental Authority applicable to the Business.

6. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and shall automatically terminate upon the earlier to occur of: (a) the consummation of the sale contemplated by the Asset Purchase Agreement on the Final Closing Date; (b) the valid termination of Asset Purchase Agreement in accordance with the terms thereof; (c) the date the FCC issues a final order prohibiting the consummation of any of the Closings under the Asset Purchase Agreement or prohibiting Manager from exercising its duties and authority under this Agreement (but only to the extent of any such prohibition(s) upon consummation or performance, and not with respect to any other Closings or Assets to which such FCC order does not apply); or (d) the mutual written agreement of the Parties.

7. Indemnification.

(a) Subject to the other terms and conditions contained in this Agreement, each Party will indemnify, defend and hold harmless the other Party from and against any and all liability incurred by such Party or its affiliates arising directly from (i) such Party's performance or non-performance of its obligations under this Agreement, including, without limitation, third party claims, or (ii) the defense or disposition of any action, whether civil, administrative, investigative or criminal, with which such other Party may be involved or with which such other Party may be threatened to be involved, in each case directly resulting from any such liability.

(b) Section 7(a) will not be construed so as to provide for the indemnification of any Party for (i) any act or omission which constitutes willful misconduct, gross negligence or a willful breach of this Agreement by such Party, (ii) any liability to the extent (but only to the extent) that indemnification would be in violation of applicable law, but will be construed so as to effectuate the provisions of Section 7(a) to the fullest extent permitted by law, and (iii) liability resulting from any order of a governmental authority determining that this Agreement is in violation of applicable law; provided, that such violation was not the result of such other Party's willful breach of the terms hereof.

(c) The indemnification provided in this Section 7 will inure to the benefit of the successors and permitted assigns of each Party and shall survive the Final Closing and the expiration or termination of this Agreement.

8. No Consequential Damages. SUBJECT TO THE TERMS OF THE ASSET PURCHASE AGREEMENT, WITHOUT LIMITING ANY EXPRESS FINANCIAL OR LIABILITY PROVISIONS PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT,



CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, OR GOODWILL) ARISING IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES HEREUNDER (INCLUDING ANY SERVICE IMPLEMENTATION DELAYS AND/OR FAILURES OR INTERRUPTION IN SERVICE), UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF, OR WILLFUL AND MATERIAL BREACH OF THIS AGREEMENT BY ANY PARTY.

9. Limitation on Liability for Losses. Subject to Manager's obligations to pay the expenses of operation of the Business (other than Excluded Expenses) pursuant to Section 3(d) and except to the extent of its indemnification obligations under Section 7(a) hereof or any liability to Sellers arising out of the willful misconduct, gross negligence or a willful breach of this Agreement by Manager, Sellers expressly agree that Manager will have no liability to Sellers or any third party based on the operations of the Business or the management thereof by Manager after the Effective Date, including, without limitation, for the failure of the Business to achieve certain profitability levels.

10. Non-Recourse. Except as otherwise contemplated by the Asset Purchase Agreement, no past, present or future director, officer, employee, incorporator, member, partner, stockholder, affiliate (unless such affiliate is performing such obligation or incurring such liability on behalf of Sellers or Manager, as applicable), agent, attorney or representative of Sellers or Manager or their respective affiliates shall have any liability for any obligations or liabilities of Sellers or Manager, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the matters contemplated hereby.

11. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties (which shall not be unreasonably withheld or delayed); provided, however, that Manager may assign this Agreement and its rights, interests and obligations hereunder to any affiliate upon written notice to Sellers. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person shall have any right, benefit or obligation under this Agreement as a third party beneficiary or otherwise.

12. Notices. Except as otherwise specified in Section 3 of this Agreement, all notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall given in accordance with Section 12.1 of the Asset Purchase Agreement (with Manager in its capacity as "Buyer" thereunder) or to



such other place and with such other copies as either party may designate as to itself by written notice to the other.

13. Force Majeure. Subject to the terms of the Asset Purchase Agreement, the parties shall not be responsible for any delay or failure to perform their duties and obligations hereunder when such delay or failure shall be due to acts of God or events beyond the reasonable control of the Parties, including, without limitation, fire not caused by such Party's acts or omissions, storm, earthquake, the enactment of any Law not in effect as of the date hereof, acts of public enemy, war, terrorism, rebellion, insurrection, riot, invasion, strike or lockout (other than such labor disputes involving such Party). The Parties shall promptly notify each other of the existence or threatened existence of any such acts of God or event so as to permit the Parties to take any steps they may reasonably deem advisable under the circumstances, and the Parties agree to use their reasonable commercial efforts to minimize the extent and the impact of their inability to perform properly and shall resume performance promptly upon the removal or termination of such causes.

14. Governing Law. THIS AGREEMENT SHALL BE CONSTRUED, INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT REFERENCE TO THE CHOICE OF LAW PROVISIONS OF TEXAS LAW).

15. Entire Agreement; Amendments and Waivers. This Agreement together with the Asset Purchase Agreement, including all Exhibits and Schedules thereto, constitute the entire agreement among the parties pertaining to the subject matter hereof and thereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the Parties hereto. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument, binding upon the parties hereto. A facsimile signature page shall be deemed an original, unless an original is required by applicable law.

17. Expenses. Except as otherwise specified in this Agreement, each Party shall pay its own legal, accounting, out-of-pocket and other expenses in connection with, arising out of or incident to this Agreement and the transactions contemplated hereby, including, without limitation, any action taken by such Party in preparation for carrying this Agreement into effect.



18. Severability. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

19. Titles; Gender; Certain Interpretive Matters. The titles, captions or headings of the Sections herein, and, the use of a particular gender, are for convenience of reference only and are not intended to be a part of or to affect or restrict the meaning or interpretation of this Agreement. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference. All references in this Agreement to Dollars or "\$" shall mean U.S. Dollars. Except as otherwise provided or if the context otherwise requires, whenever used in this Agreement, (a) the terms "include" and "including" shall be deemed to be followed by the phrase "without limitation," (b) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision, (c) any definition of or reference to any Law, agreement, instrument or other document herein will be construed as referring to such Law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified and (d) any definition of or reference to any statute will be construed as referring also to any rules and regulations promulgated thereunder.

20. Construction. This Agreement has been negotiated by the parties hereto and their respective legal counsel and legal or equitable principles that might require the construction of this Agreement or any provision of this Agreement against the Party drafting this Agreement shall not apply in any construction or interpretation of this Agreement.

21. No Partnership or Joint Venture Created. Nothing in this Agreement shall be construed or interpreted to make Manager and Sellers partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided herein. Neither Manager nor any of the Sellers is authorized to bind the other to any contract, agreement or understanding. Manager is an independent contractor in the performance of the services contemplated hereunder and shall determine the method, details and means of performing such services.

*[Signature page(s) follow.]*

Executed as a document under seal on the date first set forth above.

TNCI OPERATING COMPANY LLC

UPH HOLDINGS, INC.

BY: \_\_\_\_\_  
Name: Jeff Compton  
Its: President & Chief Operating Officer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PAC-WEST TELECOMM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

TEX-LINK COMMUNICATIONS,  
INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

UNIPOINT HOLDINGS, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

UNIPOINT ENHANCED SERVICES,  
INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



UNIPOINT SERVICES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

NWIRE, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PEERING PARTNERS  
COMMUNICATIONS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Schedule 3(a)(vi)

Consultants  
(subject to completion)

Blaine Gilles



IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed by their duly authorized representatives on the day and year first above written.

**BUYER:**

TNCI OPERATING COMPANY LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SELLERS:**

UPH HOLDINGS, INC.

By: [Signature]

Printed Name: MIKE HOLLOWAY

Its: PROZIDENT

PAC-WEST TELECOMM, INC.

By: [Signature]

Printed Name: MIKE HOLLOWAY

Its: PROZIDENT

TEX-LINK COMMUNICATIONS, INC.

By: [Signature]

Printed Name: MIKE HOLLOWAY

Its: PROZIDENT

UNIPOINT HOLDINGS, INC.

By: [Signature]

Printed Name: MIKE HOLLOWAY

Its: PROZIDENT

UNIPOINT ENHANCED SERVICES, INC.

By: 

Printed Name: MIKE HOLLOWAY

Its: PRESIDENT

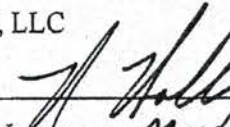
UNIPOINT SERVICES, INC

By: 

Printed Name: MIKE HOLLOWAY

Its: PRESIDENT

NWIRE, LLC

By: 

Printed Name: MIKE HOLLOWAY

Its: PRESIDENT

PEERING PARTNERS COMMUNICATIONS, LLC

By: 

Printed Name: MIKE HOLLOWAY

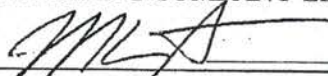
Its: PRESIDENT



IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed by their duly authorized representatives on the day and year first above written.

**BUYER:**

TNCI OPERATING COMPANY LLC

By: 

Printed Name: Jeff Compton

Its: CEO/President

**SELLERS:**

UPH HOLDINGS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

PAC-WEST TELECOMM, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

TEX-LINK COMMUNICATIONS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

UNIPOINT HOLDINGS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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202 US Route One, Suite 206  
Falmouth, ME 04105

One Communications/Earthlink  
5 Wall Street  
Burlington, MA 01803

America OnLine  
22000 AOL Way  
Dulles, VA 20166

Telesense  
Cabs Department  
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Las Vegas, NV 89133-6430

Cox Communications  
1550 W. Deer Valley Rd.  
Phoenix AZ 85027

CenturyLink  
P.O. Box 2961  
Phoenix, AZ 85062-2961

Frontier  
P.O. Box 92713  
Rochester, NY 14692-0000

Cogent Communications  
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Baltimore, MD 21279-1087

Genband, Inc.  
ATTN: Eric Hinton  
2801 Network Blvd  
Suite 300  
Frisco, TX 75034

Samsara  
1250 S Capital of Texas Highway  
Bldg 2-235  
West Lake Hills, TX 78746

La Arcata Development Limited  
ATTN: ACCOUNTS RECEIVABLE  
c/o NAI Reco Partners  
1826 N. Loop 1604 W, #250  
San Antonio, TX 78248

Grande Communications Network  
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P.O. Box 121204  
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215 Slater Street  
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Alpheus Communication  
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Attn: Kevin McInerny  
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75 Remittance Drive, Suite 6647  
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FPL FiberNet LLC  
TJ412-01-0-R  
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