

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

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DIVISION OF
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SERVICES

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

DEBTORS.

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	§	JOINTLY ADMINISTERED UNDER
AUSTIN, TEXAS 78730	§	CASE NO. 13-10570

CHAPTER 11

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COMMISSION
CLERK

NOTICE OF AUCTION AND SALE

PLEASE TAKE NOTICE that on June 20, 2013, the above-referenced debtors and debtors in possession (the "Debtors"), filed their 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) the Payment of the Net Proceeds of Sale to Hercules Technology II, L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Lease (the "Motion") with the United States Bankruptcy Court for the Western District of Texas (the "Bankruptcy Court"). All parties that may be interested in submitting a bid for the Assets¹ or any portion thereof or taking part in the Auction must read carefully both the Bidding Procedures

¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Bidding Procedures.

and the order approving the Bidding Procedures (the "Bidding Procedures Order"), a copy of which is attached hereto.

PLEASE TAKE FURTHER NOTICE that on June 28, 2013, following a hearing held on June 27, 2013, the Bankruptcy Court entered the Bidding Procedures Order and scheduled a hearing to consider the Sale Motion for July 22, 2013, at 1:30 p.m. (prevailing Central Time) (the "Sale Hearing").

PLEASE TAKE FURTHER NOTICE that only those parties that submit Qualified Bids may participate in the Auction; if you are interested in determining how to submit such a Qualified Bid, you must comply with the terms of the Bidding Procedures Order. Any party in interest wishing to receive a complete set of the Motion, the draft APA, and available marketing materials may do so by contacting the Debtors' undersigned counsel.

PLEASE TAKE FURTHER NOTICE that any party that wishes to take part in this process and submit a bid for the Assets must submit its competing bid on, or prior to, July 3, 2013, at 5 p.m. (prevailing Central Time) (the "Bid Submission Deadline") to counsel for the Debtors, Patricia B. Tomasco, Jackson Walker, L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas, 78701, counsel for the Official Unsecured Creditors' Committee ("Committee"), Craig A. Wolfe, Kelley Drye & Warren LLP, 101 Park Avenue, New York, New York, 10178, and counsel for the Debtors' secured creditor, Hercules Technology II, L.P. ("Hercules"), Stuart Komrower, Cole Schotz Meisel Forman & Leonard, PA, 25 Main Street, Hackensack, New Jersey, 07601. The Debtors shall determine whether a bidder is a "Qualified Bidder" as defined under the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that an auction (the "Auction") with respect to a contemplated transaction shall take place on July 10, 2013 at 9:00 a.m. (prevailing Central Time)

at the offices of Jackson Walker, L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas, 78701.

PLEASE TAKE FURTHER NOTICE that only a Qualified Bidder who has submitted a Qualified Bid will be eligible to attend and/or participate at the Auction. At the Auction, Qualified Bidders will be permitted to increase their bids. The bidding at the Auction shall be conducted as set forth in the Bidding Procedures, which may be amended, modified, or supplemented as determined by the Debtors. The Winning Bidder shall be determined by the Debtors. The Debtors may announce a Stalking Horse Bid on July 3, 2013, and provide a separate notice to Qualified Bidders of the Stalking Horse Bid on July 3, 2013. A Qualified Bidder may submit an additional bid consistent with the terms and conditions of the Stalking Horse Bid and the Bidding Procedures Order (“Additional Bid”) on or before 5:00 p.m. Central Prevailing Time on July 9, 2013. Failure to submit an Additional Bid will not disqualify an otherwise Qualified Bidder from participating in the Auction.

PLEASE TAKE FURTHER NOTICE that a hearing will be held before the Honorable United States Bankruptcy Judge Tony M. Davis on July 22, 2013, at 1:30 p.m., prevailing Central Time (the “Sale Hearing”), in the United States Bankruptcy Court for the Western District of Texas, Austin Division, Homer J. Thornberry Federal Judicial Building, 903 San Jacinto Blvd., Suite 322, Austin, TX 78701. At the Sale Hearing, the Debtor will present the Winning Bid(s) to the Bankruptcy Court and seek the entry of an order(s) approving the sale of the Assets of the Debtors to the Winning Bidder(s) (the “Sale Order”).

PLEASE TAKE FURTHER NOTICE that the Debtors will sell their assets subject to the terms of one or more Winning Bid(s) and assign any liabilities or any portion thereof to such Winning Bidder(s) pursuant to the Sale Order. If any Winning Bidder fails to consummate an approved Sale because of a breach or a failure to perform on the part of such Winning Bidder, the

Debtor may sell its assets to one or more Runner-Up Bidder(s), without further order of the Bankruptcy Court.

Dated: June 28, 2013.

Respectfully submitted,

JACKSON WALKER L.L.P.
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(512) 236-2002 - FAX

By: /s/ Patricia B. Tomasco

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**COUNSEL FOR DEBTORS-IN-
POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June 2013, a true and correct copy of the foregoing was served via the Court's CM/ECF electronic notification system on all parties requesting same, and via US first class mail, post prepaid to the parties listed below, and on the attached service list.

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, Inc.
6500 River Place Blvd., Bldg. 2, Suite 200
Austin, Texas 78730

Valerie Wenger
Office of the United States Trustee
903 San Jacinto, Room 230
Austin, TX 78701

Stuart Komrower
Ilana Volkov
Cole, Schotz, Meisel, Forman & Leonard, P.A.
25 Main Street
Hackensack, New Jersey 07601

/s/ Patricia B. Tomasco _____

Patricia B. Tomasco



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: June 27, 2013.

Tony M. Davis

TONY M. DAVIS
UNITED STATES BANKRUPTCY JUDGE

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

IN RE:	§	
UPH HOLDINGS, INC.	§	CASE NO. 13-10570
PAC-WEST TELECOMM, INC.	§	CASE NO. 13-10571
TEX-LINK COMMUNICATIONS, INC.	§	CASE NO. 13-10572
UNIPOINT HOLDINGS, INC.	§	CASE NO. 13-10573
UNIPOINT ENHANCED SERVICES, INC.	§	CASE NO. 13-10574
	§	
UNIPOINT SERVICES, INC.	§	CASE NO. 13-10575
NWIRE, LLC	§	CASE NO. 13-10576
PEERING PARTNERS COMMUNICATIONS, LLC	§	CASE NO. 13-10577
	§	
DEBTORS.	§	CHAPTER 11
	§	
EIN: 45-1144038; 68-0383568; 74-2729541; 20-3399903; 74-3023729; 38-3659257; 37-1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200 AUSTIN, TEXAS 78730	§	JOINTLY ADMINISTERED UNDER CASE NO. 13-10570

ORDER ESTABLISHING CURE PROCEDURES AND DEADLINES

CAME ON FOR CONSIDERATION, the Motion of the Debtors for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II) Authorizing the (A) Sale of Substantially All the Debtors' Assets, (B) the Payment of the Net Proceeds of Sale to Hercules Technology II. L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ("Motion"), the above-captioned debtors and debtors in possession ("Debtors"), and the Court having considered the Motion finds that the Court should establish procedures and deadlines in connection with the Sale Hearing¹ to approve the sale of the Debtors' Assets and the assumption and assignment of executory contracts.² It is therefore

ORDERED that the following deadlines and provisions shall apply to the procedures for the approval of the Motion and the relief requested

1. The Debtors shall file a schedules of proposed cure amounts (the "Cure Amounts") for any contract the Debtors anticipate the ultimate purchaser may assume under the relevant APA, a pro forma APA and a pro forma Sale Order on or before July 3, 2013.

2. The Debtors shall serve notice of Winning Bidder; list of contracts to be assumed and assigned; redline of APA and available evidence they would use to demonstrate adequate assurance of future performance by the Winning Bidder on or before July 12, 2013.

3. Any objections to the Cure Amounts shall be filed on or before July 15, 2013.

4. Any objections related to adequate assurance of future performance and any other objections to the sale shall be filed on or before July 17, 2013.

5. The Debtors shall file a redline of the proposed Sale Order on or before July 17, 2013.

6. The Debtors shall hold a conference call on July 19, 2013, at 1:00 p.m. CDT to

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Motion.

discuss any objections to the proposed Sale Order via conference call at 1-877-760-2047; Participant Code 512-236-2076 (the "Conference Call"). Parties objecting to the form of Sale Order shall participate in the Conference Call. Any unresolved issues remaining after the Conference Call may be raised and decided at the Sale Hearing.

To the extent the Debtors extend any deadlines set forth above, the creditors' time to respond shall be extended by the same number of business days.

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² A separate Order Approving Bid Procedures provides additional deadlines regarding the conduct of the Auction and setting the Sale Hearing for July 22, 2013.



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: June 27, 2013.

**TONY M. DAVIS
UNITED STATES BANKRUPTCY JUDGE**

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

IN RE:	§	
UPH HOLDINGS, INC.	§	CASE NO. 13-10570
PAC-WEST TELECOMM, INC.	§	CASE NO. 13-10571
TEX-LINK COMMUNICATIONS, INC.	§	CASE NO. 13-10572
UNIPOINT HOLDINGS, INC.	§	CASE NO. 13-10573
UNIPOINT ENHANCED SERVICES, INC.	§	CASE NO. 13-10574
	§	
UNIPOINT SERVICES, INC.	§	CASE NO. 13-10575
NWIRE, LLC	§	CASE NO. 13-10576
PEERING PARTNERS COMMUNICATIONS, LLC	§	CASE NO. 13-10577
DEBTORS.	§	CHAPTER 11
	§	
EIN: 45-1144038; 68-0383568; 74-2729541; 20-3399903; 74-3023729; 38-3659257; 37-1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200 AUSTIN, TEXAS 78730	§	JOINTLY ADMINISTERED UNDER CASE NO. 13-10570-TMD

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) THE PAYMENT OF THE NET PROCEEDS OF SALE TO HERCULES TECHNOLOGY II, L.P., AND (C) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES

CAME ON FOR CONSIDERATION on this day the 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) the Payment of the Net Proceeds of Sale to Hercules Technology II. L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Leases ("Motion") filed by UPH Holdings, Inc., ("UPH"), Pac-West Telecom, Inc., ("Pac-West"), Tex-Link Communications, Inc. ("Tex-Link"), UniPoint Holdings, Inc. ("UniPoint Holdings"), UniPoint Enhanced Services, Inc. ("UniPoint Enhanced"), UniPoint Services, Inc., ("UniPoint"), nWire, LLC ("nWire"), and Peering Partners Communications, LLC ("Peering Partners") (collectively the "Debtors"), pursuant to §§ 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order approving the following sale and bidding procedures ("Bidding Procedures"), in connection with the sale of substantially all of the Debtors' assets, and providing certain protections to any identified stalking horse, including the form and manner of service of the notice of sale (the "Auction and Sale Notice") attached hereto as Exhibit A, and granting other relief related thereto; and upon considering the Motion, the Court finds that the Motion should be granted on the terms set forth herein. It is therefore

ORDERED that the following bid procedures ("**Bid Procedures**") are hereby authorized and approved:

1. An Auction (as defined in the Motion), if any, shall be held on **July 9, 2013, through July 11, 2013** at the offices of Jackson Walker, L.L.P., located at 100 Congress Avenue, Suite 1100, Austin, Texas, 78701 (the "Auction").

2. Each person or entity wishing to participate in the Auction must, no later than 5:00 p.m. (CT), on July 3, 2013 ("Bid Submission Deadline"), submit a written bid (the "Bid") containing and complying with the following items ("Qualified Bid") to counsel for the Debtors, Patricia B. Tomasco, Jackson Walker, L.L.P., 100 Congress Avenue, Suite 1100, Austin, Texas, 78701; counsel for the Committee (as defined in the Motion); and counsel for Hercules (as defined in the Motion) such that it is actually received by the Bid Submission Deadline. Such bids will be submitted to the Court for approval at the hearing the approve the Sale (as defined in the Motion, "Sale Hearing").

3. The Debtors reserve the right, in their reasonable business judgment and in consultation with the Committee (as defined in the Motion) and the Debtors' secured lender, Hercules (as defined in the Motion) to (a) impose, at or prior to the Auction, additional terms and conditions on a sale of the Assets consistent with the Bid Procedures Order, (b) extend the deadlines set forth in the Bid Procedures no more than (5) five business days; (c) adjourn the Auction for no more than three (3) business days; (d) adjourn the Sale Hearing in open court without further notice; (e) withdraw from the Auction all or a portion of the Assets at any time prior to or during the Auction or cancel the Auction; (f) reject all Qualifying Bids if no bid is, in the Debtors' reasonable business judgment, for fair and adequate consideration; and (g) modify the Bid Procedures, including, without limitation, any and all processes and rules regarding conduct of activities at the Auction, including, among other things, the manner in which bids are submitted and the permitted increments of such bids; provided, however, that if Hercules is participating in the Auction as a Qualified Bidder, the Debtors and the Committee may exclude Hercules from consultation on any of the foregoing topics if the Debtors and the Committee reasonably believe that including Hercules in such consultation would confer an unfair advantage on Hercules to the detriment of other Qualified Bidders or would otherwise chill bidding.

4. When bidding for the Assets, all bidders shall abide by the following Bid Procedures. To become a "Qualified Bidder" and thereby be permitted to present a bid for the Assets at the Auction, a proposed bidder shall deliver a written bid containing and complying with the following items (a "Qualified Bid") to counsel for the Debtors, counsel for the Committee (as defined in the Motion), and counsel for Hercules (as defined in the Motion), by the Bid Submission Deadline, provided that the Debtors and the Committee may provide information in subparagraph (g) to Hercules on a professional eye's only basis if (i) the submitting bidder requires that such information remain confidential or (ii) if the Debtors and the Committee reasonably believe that providing such information to Hercules would provide an unfair advantage on Hercules to the detriment of other Qualified Bidders or would otherwise chill bidding:

- a. the bid must be marked to show changes against the form Asset Purchase Agreement the Debtors shall provide to potential bidders (the "APA");
- b. the bid must include a commitment to consummate the transaction within not more than five (5) calendar days after the entry by the Court of the order approving the sale, subject only to modifications reasonably required to obtain any regulatory approvals reasonably necessary to effectuate the sale and the satisfaction by the Debtors of their respective obligations to close;
- c. the Qualified Bidder's offer must be irrevocable until the Court enters an order denying approval of such Qualified Bidder's bid or an order approving the Qualified Bid of another Qualified Bidder;
- d. if the Debtors have selected a Stalking Horse, the bid must be at a price which exceeds the purchase price to be paid by the Stalking Horse by a specified amount ("Initial Overbid"), to be predetermined by the Debtors in consultation with the Committee and Hercules, but not less than 5%;
- e. the bid must be accompanied by a certified check or wire transfer in the amount of 15% of the purchase price identified in the bid (the "Deposit"), made payable to the Debtors, which Deposit shall be held in a segregated interest-bearing account, with the Deposits of the other bidders. The Deposit of the Winning Bidder (defined below) will be held in such account until the earlier of the closing or termination of the Sale Agreement. If the Debtors do not consummate the Winning Bidder's Sale Agreement for any reason other than the Winning Bidder's failure to

consummate the sale, the Debtors' sole obligation will be to refund the Deposit to such Winning Bidder. Any Deposit made by the bidder that does not become the Winning Bidder or a Runner-Up Bidder (defined below) shall be returned, along with any accrued interest, following the completion of the Sale Hearing;

- f. the bid must state that the form of consideration for the Assets being purchased will be paid in cash, without any financing conditions included;
- g. the bid must be accompanied by evidence admissible under the Federal Rules of Evidence demonstrating the competing bidder's ability to consummate the proposed Sale Agreement and to provide adequate assurance of future performance to the non-debtor party under any executory contract or unexpired leases to be assumed, if any, and assigned pursuant to the Sale Agreement. Each Qualifying Bidder shall be deemed to acknowledge and represent in its Qualifying Bid that it has had an opportunity to inspect and examine the Assets and to conduct any and all due diligence regarding the Assets prior to making its bid to the extent it has deemed necessary and appropriate, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in its Qualifying Bid.

5. Prior to the Sale Hearing, the Debtors, in consultation with Hercules and the Committee, will determine which bidders have submitted qualified bids based on the above criteria. Notwithstanding such criteria, (a) Hercules is considered to be a Qualified Bidder and is authorized, in its discretion, to credit bid at the auction all or any portion of the Hercules Prepetition Indebtedness under § 363(k) of the Bankruptcy Code; and (b) if the Debtors, in consultation with Hercules and the Committee, select a Stalking Horse, such Stalking Horse shall be deemed a Qualified Bidder.

6. The Debtors shall conduct the Auction of the Assets on **July 9, 2013 through July 11, 2013** at the offices of Jackson Walker, L.L.P., in Austin, Texas, or such other place as may be appropriate under the circumstances. Only Qualified Bidders shall be entitled to make a bid at the Auction. Qualified Bidders may participate in the Auction in person. Prior to the Auction, the

Debtors, in conjunction with the Committee and Hercules shall evaluate each Qualifying Bid received and select the highest and best offer so submitted, which shall constitute the opening bid for the Assets at the Auction. All bids made at Auction for the Assets shall be in increments of at least \$100,000.

7. Upon the conclusion of the Auction, the Debtors shall identify the Winning Bid and the "Runner-Up Bid," if any, as defined below. The Debtors propose to send a notice ("Notice of Winning Bidder & Cure Amounts"), in a form substantially similar to the form attached hereto as Exhibit B, to all parties in interest, including all contract counterparties, immediately following the conclusion of the Auction on July 12, 2013.

8. At the Sale Hearing, the Debtors shall present to the Court the Winning Bid (the bidder under which, the "Winning Bidder"), and if applicable, the Runner-Up Bid, and request the entry of the Sale Order (as defined in the Motion) approving such bid(s) subject to the terms thereof in a form reasonably satisfactory to counsel for the Winning Bidder and Runner-Up Bidder. In the event that no competing bid is presented at the Auction, then the highest and best Qualifying Offer for the Assets shall constitute the "Final Accepted Bid." In the event that no Final Accepted Bid is presented at the Auction, then the Debtors shall be entitled to adjourn, postpone, and/or cancel the Auction, without prejudice to conducting a subsequent auction or taking any other action.

9. The Debtors, after consultation with the Committee and Hercules may, but shall not be obligated to, request that the Court determine at the Sale Hearing the next highest and best bid for the Assets other than the prevailing Bid (the "Runner-Up Bid"). In the event that the party making the Final Accepted Bid refuses or is otherwise unable to close in accordance with the terms thereof within eleven (11) business days after the entry of the Sale Order or such later date as may be provided in the relevant APA, then, in such event, the Debtors, in consultation

with the Committee and Hercules, may accept the Runner-Up Bid in writing to such bidder within five (5) calendar days thereafter, in which case, the party submitting the Runner-Up Bid ("Runner-Up Bidder") shall be required to consummate the transactions contemplated in the Runner-Up Bid at the purchase price so offered without further act, deed, or order of Court within the following five (5) calendar days after such acceptance. If the Debtors fail to timely notify the Runner-Up Bidder, then the Runner-Up Bid shall be considered null and void and of no legal effect whatsoever upon the Debtors' return of the Deposit to such party which shall occur within two (2) business days after the conclusion of such 5-day notice period, and each party shall otherwise suffer their own losses, costs, expenses or damages arising out of, under or related to the underlying Sale Agreement.

10. If a Stalking Horse (as defined in the Motion) is selected, then the Stalking Horse shall be entitled to a fee (the "Breakup Fee") equal to three percent (3%) of the purchase price of its bid, payable upon the closing of an Alternative Transaction. For the purposes of this Order, "Alternative Transaction" shall mean one or more sales involving substantially all of the Assets, or any plan of reorganization or plan of liquidation pursuant to which substantially all of the Assets are disposed of by one or more of the Debtors, or are retained via a chapter 11 plan that is funded, in whole or in part, by third-party debt or capital contributions.

11. The Breakup Fee, if applicable, shall be paid, without the need for any further Order, 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 Breakup Fee shall be paid upon the effective date of such plan.

ORDERED that the form and notice of the Bidding Procedures and the Auction and Sale Notice (as defined in the Motion) is hereby approved; it is further

ORDERED that the Debtors shall serve these Bid Procedures and Auction and Sale Notice (as defined in the Motion) on all creditors and parties in interest on or before June 28, 2013; it is further

ORDERED that a hearing to approve the Sale (as defined in the Motion) is hereby set for July 22, 2013 ("Sale Hearing") before the Honorable Tony M. Davis, United States Bankruptcy Court, Western District of Texas, Homer J. Thornberry Federal Judicial Building, 903 San Jacinto Blvd., Suite 322, Courtroom No. 1, Austin, Texas 78701.

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Order prepared and is being submitted by:

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