

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

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

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COMMISSION CLERK

DEBTORS' MOTION FOR EXTENSION OF TIME TO ASSUME OR REJECT UNEXPIRED LEASES OF REAL PROPERTY PURSUANT TO SECTION 365(D)(4) OF THE BANKRUPTCY CODE

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS.

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW 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”), and debtors-in-possession in the above-captioned Chapter 11 cases and file this their Debtors’ Motion for Extension of Time to Assume or Reject Unexpired Real Property Leases of Non-Residential Real Property Pursuant to § 365(d)(4) of the Bankruptcy Code (“Motion”). In support of the Motion, the Debtors would show:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2). The relief requested in this Motion is sought pursuant to 11 U.S.C. § 365(d)(4).

II. FACTUAL BACKGROUND

2. On March 28, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue in possession of their property and management of its business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. The Debtors are a group of affiliated entities that provide telecommunication services in a variety of contexts including voice over Internet protocol (“VoIP”), local exchange and enhanced telecommunications, and data services. A detailed description of the background of the Debtors and the events leading up to the filing of the voluntary petitions by the Debtors, is provided in the Declaration of J. Michael Holloway in Support of First Day Motions (“Declaration”) [Dckt. No. 17] which is incorporated herein by reference.

4. The Debtors filed these Chapter 11 cases to pursue a reorganization. The Debtors expect to continue core activities pertaining to each of its business units during the reorganization process, including focusing upon its telecommunication business, and anticipate emerging successfully

from Chapter 11. The instant Motion is directed at the Debtors' request that an extension of time to assume or reject their nonresidential real property leases be extended for ninety (90) days.

III. RELIEF REQUESTED

5. Pursuant to this Motion, the Debtors seek an order from the Court extending the time to assume or reject their nonresidential real property leases for ninety (90) days. The Debtors are parties to various nonresidential real property leases ("Leases"). Pursuant to § 365(d)(4)(A) of the Bankruptcy Code, the initial deadline for the Debtors to assume or reject the Leases will expire on July 26, 2013 ("Initial Deadline"). By this Motion, the Debtors request the entry of an order, pursuant to § 365(d)(4)(B)(i) of the Bankruptcy Code, extending the time period for the Debtors to assume or reject the Leases for ninety (90) days, through and including October 24, 2013 ("Extended Deadline").

IV. BASIS FOR RELIEF

6. Pursuant to § 365(d)(4)(A) of the Bankruptcy Code, a debtor is provided an initial period of one hundred and twenty (120) days within which to assume or reject unexpired leases of nonresidential real property. *See* 11 U.S.C. § 365(d)(4)(A). But, § 365(d)(4)(B)(i) of the Bankruptcy Code provides that the Court may extend this initial 120-day period for an additional ninety (90) days "for cause." *See* 11 U.S.C. § 365(d)(4)(B)(i).

7. Courts have recognized the benefits of granting debtors additional time to assume or reject unexpired nonresidential leases pursuant to § 365(d)(4). *See, e.g., In re Channel Home Ctrs., Inc.*, 989 F.2d 682, 687-88 (3d Cir. 1993); *In re GST Telecom, Inc.*, 2001 WL 686971 (D. Del. June 8, 2001). As noted by the Third Circuit, "nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop." *Channel Home Ctrs.*, 989 F.2d at 689.

8. In this vein, courts have discretion in determining whether sufficient cause exists to extend the time for a debtor to assume or reject unexpired leases of nonresidential real property. Among other factors, courts have considered (i) whether the leases are an important asset of the estate; (ii) whether the debtor has had sufficient time to appraise the value of the leases and its financial situation; (iii) whether the case is unusually large or complex; (iv) whether the debtor in possession has had a reasonable period of time to analyze the estate and formulate a reorganization plan; and (v) whether any other facts or circumstances exist that indicate that additional time is necessary to decide whether to reject, assume, or assign the leases. *See, e.g., In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); *see also In re Channel Home Centers, Inc.*, 989 F.2d 682, 689 (3d Cir. 1993); *South Street Seaport, Ltd. P'ship v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996). Additionally, when the debtor's estate will receive a benefit from the extension of time to assume or reject leases, courts will often grant the extension. *See, e.g., Coleman Oil v. Circle K Corp. (In re Circle K. Corp)*, 127 F.3d 904, 909 n.5 (9th Cir. 1997).

9. In the instant case, there is compelling "cause" to extend the Initial Deadline to allow the Debtors additional time within which to assume or reject the Leases. The Debtors are currently involved in the process of developing their plan of reorganization. The Debtors accordingly have not yet been able to finalize their determination with respect to the Leases. Extending the period to assume or reject will thus provide the Debtors with time and flexibility required to determine the ultimate disposition of the Leases in conjunction with their plan of reorganization. Accordingly, extension of the Initial Deadline is in the best interest of creditors and the Debtors' estates.

WHEREFORE, PREMISES CONSIDERED the Debtors respectfully request that the Court enter an order (i) extending the period within which the Debtors must assume or reject the Leases for an additional ninety (90) days, through and including October 24, 2013; and (ii) granting such other and further relief as is just and proper.

Dated: July 8, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July 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.

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Tex-Link Communications, Inc.
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