

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

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 COMMISSION CLERK

NOTICE OF PROPOSED SALE ORDER AND CURE AMOUNTS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE TONY M. DAVIS:

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”), by and through their proposed, undersigned counsel, and files this Notice (“Notice”) of Proposed Sale Order and Cure Amounts and would aver as follows:

1. On June 20, 2013, the Debtors filed its Motion for Entry of Orders (I) Approving Bidding Procedures and Providing Certain Protections and Authorizing the (A) Sale of the Substantially all Debtor’s 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 ("Sale Motion") [Dckt. No. 255].

2. A hearing is currently set for July 22, 2013 at 1:30 p.m. (CDT) to Approve the Sale Motion ("Sale Hearing"). After discussion, the Debtors and other parties have agreed to the language contained in the attached version of the amended proposed Sale Order and Cure Amounts attached hereto as Exhibits A and B.

3. The Debtors hereby give notice of revised proposed Sale Order pursuant to the Cure Procedures Order previously entered by the Court.

Dated: July 21, 2013.

Respectfully submitted,

JACKSON WALKER L.L.P.
100 Congress Ave., Suite 1100
Austin, Texas 78701
(512) 236-2000
(512) 236-2002 - FAX

By: /s/ Patricia B. Tomasco
Patricia B. Tomasco
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**COUNSEL FOR DEBTORS-IN-
POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that on the 21st 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 on the 22nd day of July 2013, a true and correct copy of the foregoing was served 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

EXHIBIT "A"
ASSIGNED CONTRACTS

(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	238,651
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
151 Front St. #706	Toronto	Canada	PointOne	M5J2 N1	Equinix - Switch & Data	No - month to month	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
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	82,614
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
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

(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, Inc. (CommPartners)	Carrier Services Agreement dated 1/30/2006	0
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	0

Customer Name	Debtor Affiliation	Description	Cure
		amendments	
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
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	Termination Services Agreement dated 4/27/2010	0

Customer Name	Debtor Affiliation	Description	Cure
	PointOne		
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
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

(iii) Vendor Contracts¹

Vendor Name	Debtor Affiliation	Description
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.	Assignment and Assumption Agreement; dated June 18, 2007
Alpheus Communications, LP	UniPoint Services, Inc.	Wholesale Master Services Agreement; dated May 2, 2007
Electric Lightwave, LLC	Pac-West Telecomm, Inc.	Information Server Access Services Agreement dated October 11, 2002, plus addendum

¹ Sorted by Vendor, may contain duplicate entries.

Vendor Name	Debtor Affiliation	Description
Southern California Edison	Pac-West Telecomm, Inc.	Agreement dated January 23, 2003
Telepacific Communications	Pac-West Telecomm, Inc.	Settlement agreement in data room – no contract
Time Warner Telecom Holdings, Inc. and Time Warner Telecom Management Co. LLC	Pac-West Telecomm, Inc.	Traffic Exchange Agreement dated November 1, 2007
XO Communications Services, Inc.	Pac-West Telecomm, Inc.	
Zayo Fiber Solution	Pac-West Telecomm, Inc	Wholesale Agreement dated May 19,2010 & additional amendments

(C) Long-Haul Circuit Providers and Cure Costs

VENDOR	CURE AMOUNT (\$)
Alpheus	121,777.59
American Telesis	698.00
Integra/ELI	71,485.00
Southern California Edison	85,246.41
Telepacific- Legacy Mpower	41,916.09
TW Telecom	55,048.75
XO Communications	96,727.96
Zayo Fiber Solutions	<u>70,128.16</u>

(iv) – Colocation Agreements

Name of Party	Debtor Affiliation	Description	Cure Amount
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
US Colo, LLC	UniPoint Holdings, Inc.	License Agreement dated January 1, 2002	\$7,428.00

(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
Transaction Network Services	nWire, LLC	Master Contract, dated effective August 11, 2010	\$0.00

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	§	
UNIPOINT SERVICES, INC.	§	CASE NO. 13-10575
NWIRE, LLC	§	CASE NO. 13-10576
PEERING PARTNERS COMMUNICATIONS, LLC	§	CASE NO. 13-10577
DEBTORS.	§	CHAPTER 11
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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) 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**

CAME ON FOR CONSIDERATION, the Motion for Entry of Orders ~~Authorizing~~ (I) Approving ~~Bidding~~ Procedures and Providing Certain Protections and (II) Authorizing the (A) Sale of the Substantially all of the Debtor's Assets, (B) the ~~payment~~ Payment of the ~~net proceeds~~ Net Proceeds of ~~sale~~ Sale to Hercules Technology II, L.P. ("Hercules"), and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases [Dckt. No. 255] (the "Sale Motion") of the above-captioned debtors and debtors in possession (the "Debtors"), pursuant to sections 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Federal Rules of Bankruptcy Procedure 2002, 6004, 6006 and 9014 (the "Bankruptcy Rules"), for entry of an order authorizing and approving, among other things, the sale of certain of the Debtors' assets free and clear of all liens, claims and liens or other encumbrances and related relief, including the assumption and assignment of certain executory contracts pursuant to the procedures established by the Court in the Bidding Procedures Order and Cure Procedures Order; and the Order Approving Bidding Procedures and Providing Certain Bid Protections and Granting Related Relief [Dckt. No. 280] (the "Bidding Procedures Order");¹ and it appearing that due and appropriate notice of the Sale Motion, the Bidding Procedures Order, the Cure Procedures Order, and the Auction and the Sale Hearing ~~having~~ has been given; and it appearing that no other notice of the relief granted by this Order need be given; and the Court having conducted a hearing on the Motion on July 22, 2013 (the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; and the Debtors, with the assistance of its sales agent, Q Advisors, LLC ("Q Advisors"), having conducted a marketing process in compliance with the Bidding Procedures Order and determined, in consultation with the Official Committee of Unsecured Creditors (the "Committee") and

¹ Unless otherwise defined herein, capitalized terms shall have the meanings ascribed thereto in the Sale Motion, the APA, the Cure Procedures Order and/or the Bidding Procedures Order, as applicable.

Hercules that TNCI Operating Company, LLC (the “Buyer”) has submitted the highest and best bid for certain property of the Debtor (the “Assets”) as more fully set forth in that certain Asset Purchase Agreement, dated as of July 3, 2013 by and between the Debtors and the Buyer (the “APA”); and all parties in interest having been heard, or having had a good and sufficient notice and opportunity to be heard regarding entry of this Order and approval of the Sale and APA; and notice of any other related transactions having been given in the manner directed by the Court pursuant to the Bidding Procedures Order; and the Court having reviewed and considered (x) the Sale Motion and all relief related thereto, (y) the objections thereto, if any, and (z) the statements of counsel and evidence presented in support of the relief requested by the Debtors at the Sale Hearing; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors and other parties-in-interest; and upon the record of the Sale Hearing and all other pleadings and proceedings in these chapter 11 cases, including the Sale Motion; and after due deliberation thereon, and good and sufficient cause appearing therefor,

THE COURT HEREBY FINDS AND DETERMINES THAT:²

A. Jurisdiction, Final Order and Statutory Predicates

1. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

² As appropriate, findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact. See Fed. R. Banker. P. 7052.

2. The statutory predicates for the relief requested in the Sale Motion are sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

3. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

B. Notice of the Sale and Auction

4. Actual written notice of the Sale Motion was provided to the following parties (the "Notice Parties"): (i) the United States Trustee for the Western District of Texas (the "U.S. Trustee"); (ii) counsel to the Committee; (iii) counsel to the Buyer; (iv) counsel to Hercules (v) all persons or entities holding ~~Liens (defined below)~~ Encumbrances against on any of the Assets; (vi) the Internal Revenue Service, the State of Texas, and applicable local taxing authorities; (vii) all persons or entities filing notices of appearance or requests for notice of the proceedings in these chapter 11 cases; and (viii) all known creditors and counterparties to the Debtors' executory contracts.

5. Notice of the Sale Hearing and deadlines associated with the Sale Hearing was reasonably calculated to provide all interested parties with timely and proper notice of the Sale, the Sale Hearing, the procedures associated with the Sale, the deadlines associated therewith and the provisions of this Order.

6. As evidenced by the certificates of service previously filed with the Court, proper, timely, adequate and sufficient notice of the Auction, Sale Motion, the provisions of this Order, Sale Hearing, Sale and the transactions contemplated thereby, was provided to all parties in interest, in accordance with the Bidding Procedures Order (including, without limitation paragraph 6

thereof), sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008. The notices served were good, sufficient and appropriate under the circumstances, and no other or further notice of the Auction, Sale Motion, Sale Hearing, or the Sale is, was, or shall be required.

7. The disclosures made by the Debtors concerning the Auction, APA, Sale Motion, Sale, the provisions of this Order, and the Sale Hearing were good, complete and adequate. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion, the relief requested therein, and the provisions of this Order has been afforded to all interested persons and entities.

C. Assumption of Contracts

8. Pursuant to the Sale Motion, the Cure Procedures Order and the Debtors' Notice of Winning Bidder and Assigned Contracts [Docket No. 325], the Debtors provided notice to counterparties of the Buyer's intent to take assignment of certain contracts pursuant to the APA (the "Assigned Contracts") together with proposed amounts to cure any pre-petition default thereunder (the "Cure Amounts"). The Buyer presented evidence of (1) sufficient cash available to pay the Cure Amounts at the Initial Closing and (2) sufficient capitalization and liquidity to provide adequate assurance of future performance under the Assigned Contracts.

D. Good Faith of the Buyer

9. The APA was negotiated, proposed and entered into by the Debtors and the Buyer without collusion, in good faith and from arms' length bargaining positions.

10. The Buyer is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code. Neither the Debtors nor the Buyer have engaged in any conduct that would cause or permit the APA to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Buyer has not acted in a collusive manner with any person, and the

aggregate Purchase Price paid by the Buyer was not controlled by any agreement among the bidders or any other persons.

11. The Buyer is purchasing the Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code. The Buyer proceeded in good faith in connection with all aspects of the Sale, including: (i) complying in all respects with the Bidding Procedures Order; (ii) agreeing to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (iii) neither inducing nor causing the Debtors' chapter 11 filings; and (iv) disclosing all payments to be made by the Buyer in connection with the Sale. Accordingly, the Buyer is entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code.

E. Highest or Otherwise Best Offer

12. The Debtors conducted a sale process in accordance with, and has otherwise complied in all respects with, the Bidding Procedures Order.

13. As set forth on the record at the Sale Hearing, the Debtors retained Q Advisors in these proceedings as broker to assist the Debtors in identifying potential buyers and preparing a data room, site visits, responding to diligence requests and other related services with respect to the sale process. The uncontroverted testimony of Mr. Andy Monroe in this proceeding establishes, inter alia, that Q Advisors has extensive expertise and experience in financial matters involving telecommunication companies, and advises on mergers, acquisitions and divestitures, arranges private placement of debt and equity, and provides a broad range of corporate finance services across a number of industries, with a focus on telecommunications.

14. The sale process set forth in the Bidding Procedures Order and conducted by the Debtors and its advisors afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. With assistance from Q Advisors, the Debtors and

their representatives identified and contacted approximately __68 potential buyers by both telephone and/or writing regarding the Debtors, the Debtors' business, and the ongoing sale process contemplated by the Bidding Procedures Order. As also set forth on the record, the Debtors assembled and maintained an electronic data room containing financial information and key agreements relative to the Debtors' business, and ____38 potential buyers executed confidentiality agreements and performed diligence. The Debtors hosted 4 in-person management meetings with potential buyers in its effort to solicit competing bids and to test the Buyer's offer for the Assets.

15. The sale process and all associated deadlines and procedures were duly noticed and conducted in a non-collusive, fair, and good faith manner and a reasonable opportunity has been given to any interested party to make a higher or otherwise better offer for the Assets.

16. The Buyer submitted the highest and best offer for the Assets. The Bidding Procedures obtained the highest value for the Assets for the Debtors and its estate. No other entity or group of entities has offered to purchase the Assets for greater economic value to the Debtors' estate and/or the Debtors' creditors than the Buyer. The record of these proceedings indicates that absent the sale of the Assets to the Buyer, there is a substantial and imminent likelihood that the Debtors' business would deteriorate and, in time, cease to operate as a going concern, and that the value of the Debtors' assets, including the Assets, would be substantially diminished. The Debtors' determination that the APA constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

F. No Fraudulent Transfer

17. The consideration provided by the Buyer pursuant to the APA (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Assets, (iii) will provide a greater recovery for the Debtors' estates and their creditors than would be provided by any other available alternative, and (iv)

constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and within the meaning of section 548 of the Bankruptcy Code) and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. No other person, entity or group of entities has offered to purchase the Assets for greater economic value to the Debtors' estate than the Buyer. The Debtors' determination that the APA constitutes the highest or otherwise best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment. Approval of the Sale Motion and the APA, and the consummation of the transactions contemplated thereby, are in the best interests of the Debtors, their estates, creditors, and other parties-in-interest.

18. The Buyer is not a mere continuation of the Debtors or their estates and there is no continuity of enterprise between the Buyer and the Debtors. The Buyer is not holding itself out to the public as a continuation of the Debtors. The Buyer is not a successor to the Debtors or their estates and the Sale does not amount to a consolidation, merger or de facto merger of Buyer and the Debtors.

G. Validity of Transfer

19. The Debtors have, subject to the entry of this Order, (i) full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, (ii) all corporate authority necessary to consummate the transactions contemplated by the APA and (iii) taken all corporate action necessary to authorize and approve the APA and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the APA, are required for the Debtors to consummate the Sale, APA or transactions contemplated thereby.

20. The APA was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia. Neither the Debtors nor the Buyer is fraudulently entering into the transaction contemplated by the APA.

21. The Debtors have good and marketable title to the Assets and are the lawful owner of the Assets. Pursuant to section 363(f) of the Bankruptcy Code, and except for Permitted Encumbrances and all liabilities assumed by Buyer under the APA (the "Assumed Liabilities"), the transfer of the Assets to the Buyer will be, as of the respective closings of the transactions contemplated by the APA (the "Closing Dates"), a legal, valid and effective transfer of the Assets, to the Buyer, which transfer vests or will vest the Buyer with all right, title, and interest of the Debtors to the Assets free and clear of all (i) interests, pledges, liens, mortgages, security interests, judgments, demands, successor liability claims, charges of any kind or nature, taxes, assessments, covenants, title defects, encroachments, claims (as and to the full extent that term is defined in section 101(5) of the Bankruptcy Code), obligations, options or rights, 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 the Debtors and/or against the Debtors, as well as any other interest or burden of any kind ("Encumbrances") with such Encumbrances attaching to the sale proceeds to the same extent, validity and priority that existed prior to the Sale and (ii) all debts arising under, relating to or in connection with any act of the Debtors or claims (as that term is defined in § 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions,

interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Claims (defined below) and Encumbrances (x) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, the Debtors' or the Buyer's interests in the Assets, or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, as defined in this clause (ii), "Claims"), relating to, accruing or arising any time prior to the Closing Date, with the exception of Assumed Liabilities or as expressly provided in this Order.

H. Section 363(f) is Satisfied

22. The conditions of ~~section~~ § 363(f) of the Bankruptcy Code have been satisfied; therefore, the Debtors may sell the Assets free and clear of any lien, claim, or interest in the Assets, except for Permitted Encumbrances and those liabilities assumed pursuant to Section 2.1 of the APA (the "Assumed Liabilities"). Specifically, to the extent that the net proceeds of sale are insufficient to satisfy the allowed secured claim of Hercules in full, Hercules has consented to the sale pursuant to subsection 363(f)(2) in exchange for the payment of all proceeds of sale, excluding only the allowed fees and expenses incurred by Q Advisors, to be made directly to Hercules at each closing under the APA until Hercules' claims are fully satisfied. Such payment to Hercules has been approved in connection with the Sale Motion and is authorized in connection with the {Second Amended Final Cash Collateral Order "Cash Collateral Order"} entered in these proceedings [Docket No. 170]. The liens, claims and interests of Hercules shall attach to the proceeds of sale and all of Hercules' liens,

claims and interests on any assets of the estate not conveyed to Buyer shall survive, and the proceeds of such assets shall be paid directly to Hercules until its allowed claim under section 506(a) is satisfied in full subject to any agreement in writing reached with Hercules regarding a sharing of such proceeds. For the avoidance of doubt, for the purposes of section 363(f), until such time as actually released by the Escrow Agent to Hercules or to the Debtors in accordance with the APA and this Order (i) no Encumbrances shall be deemed to attach to the Escrow Amount (as defined in the APA), and (ii) none of the Escrow Amount shall be deemed proceeds of the Sale.

23. The Buyer would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale and the assumption of liabilities and obligations as set forth in the APA by the Buyer were not free and clear of all Encumbrances and other interests of any kind or nature whatsoever (other than Permitted Encumbrances and Assumed Liabilities). Unless otherwise expressly included in the APA or as provided herein, the Buyer shall not be responsible for any Claims and its purchase of the Assets shall not be subject to any Encumbrances.

24. The Debtors may sell the Assets free and clear of all Encumbrances and other interests of any kind or nature whatsoever against the Debtors, their estates or any of the Assets (other than Permitted Encumbrances and Assumed Liabilities) because, in addition to the consent of Hercules, holders of liens or Claims against the Debtors, its estate or any of the Assets who did not object or who withdrew their objections to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

I. Compelling Circumstances for an Immediate Sale

25. Good and sufficient reasons for approval of the APA and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, the estates, the Debtors' creditors, and other parties-in-interest. The Debtors have demonstrated (i) good, sufficient and

sound business purposes and justifications for approving the APA and (ii) compelling circumstances for the Sale outside of (a) the ordinary course of business, pursuant to § 363(b) of the Bankruptcy Code and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtors' estates and the Sale will provide the means for the Debtors to maximize distributions to creditors.

26. To maximize the value of the Assets and preserve the viability of the businesses to which the Assets relate, it is essential that the Sale occur within the time constraints set forth in the APA. Time is of the essence in consummating the Sale.

27. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the Purchase Price under the APA, the proposed Sale constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

28. The Debtors, in connection with offering services, did not disclose any policy prohibiting the transfer of personally identifiable information and, therefore, the sale of the Assets may be approved pursuant to § 363(b)(1)(A) of the Bankruptcy Code without the appointment of a consumer privacy ombudsman as defined in Bankruptcy Code § 363(b)(1).

29. Given the circumstances of the Sale and the terms of the APA, Bankruptcy Code section 351 does not apply.

30. The consummation of the Sale is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), and 363(m).

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:**

J. General Provisions

31. The relief requested in the Sale Motion, including the Sale, is granted and approved to the extent set forth in this Order.

32. Any objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled by announcement to the Court during the Sale Hearing or by stipulation filed with the Court, including any and all reservations of rights included in such objections or otherwise (except the reservations of right and objections expressly preserved in this Order), are hereby denied and overruled with prejudice. Those parties who did not object or withdrew their objections to the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

K. Approval of the APA

33. The APA and the Management Services Agreement (the "MSA"), and all of the terms and conditions thereof are hereby approved.

34. The sale of the Assets and the consideration provided by the Buyer under the APA are fair and reasonable to the Debtors and their creditors, and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

35. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and directed to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the APA, (b) close the Sale as contemplated in the APA and this Order, and (c) execute and deliver, perform under, consummate, implement and fully close the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale. The Debtors and the Buyer are authorized and directed to, without limitation or further order of this Court,

distribute the Purchase Price at each closing under the APA directly to Hercules (net only of allowed amounts payable to Q Advisors) in accordance with the Cash Collateral Order; provided that the Debtors shall escrow up to \$350,000 to account for ad valorem tax claims to be administered as set forth below. The automatic stay imposed by § 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the provisions of this Order, and to enforce the APA; provided, however, that any enforcement action commenced in any forum other than this Court shall require three (3) business days' advance notice to the Debtors, Hercules, and the Creditors' Committee.

36. This Order and the terms of the APA shall be binding on all entities, including but not limited to (a) the Debtors; (b) their estates; (c) employees and former employees; (d) all creditors of the Debtors; (e) all holders of liens, Claims or other interests (whether known or unknown) in, against or on all or any portion of the Assets, (f) the Buyer and all successors and assigns of the Buyer, (g) any trustees, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion of any of these cases to cases under chapter 7 under the Bankruptcy Code, and (h) administrative agencies, governmental agencies, secretaries of state, federal, state and local officials, including each of their respective successors and assigns. This Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, the Buyer and the respective successors and assigns of each of the foregoing.

L. Transfer of the Assets

37. Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Assets to the Buyer on the appropriate Closing Dates and each such transfer shall (a) constitute a legal, valid, binding and effective transfer of the Assets, to the Buyer, (b) vest the Buyer with title to the Assets and (c) upon the Buyer's delivery of the Purchase Price in accordance with the terms of the APA and this Order, be free and clear of all Encumbrances and other interests of any kind or nature whatsoever (other than Permitted

Encumbrances and Assumed Liabilities) provided, that such Encumbrances, including ad valorem taxes, mechanics, materialmen and subcontractor liens and rights to receive payment of trust funds, shall attach to the proceeds of the Sale in the order of their priority, with the same validity, force and effect which they now have as against the Assets; *provided, further, however*, that any ad valorem tax liens for the 2013 tax year against the Assets shall remain in effect and be retained against the property taxed until said taxes, if any, are paid. With respect to the ad valorem property taxes, the Debtors shall establish an escrow from the Purchase Price (the "Tax Escrow") in an amount equal to the aggregate asserted pre-Closing Date ad valorem taxes allegedly owed on the Assets, which funds shall be used to satisfy any such allowed ad valorem taxes, if any, or otherwise paid to Hercules, or in the event that Hercules' allowed claim is paid in full, returned to the Debtors' estates; *provided, however*, that such funds shall remain in the Tax Escrow pending further order of this Court or a court of competent jurisdiction or settlement with the applicable taxing authority. The allowed and proper pre-2013 claims of any ad valorem tax authority, plus any allowable interest thereon at the rate set forth in 11 U.S.C. § 511(a), shall be paid from the Tax Escrow to the applicable taxing authority unless the Debtors or Hercules object to said claim(s). In the event of an objection, there shall be held in the Tax Escrow from the proceeds of Sale an amount equal to the contested pre-2013 taxes for said ad valorem taxing entities, and such Sale proceeds shall be held in escrow by the Debtors, and shall not otherwise be disbursed until said objection is resolved by consent or the taxes are determined by this Court. Immediately upon resolution or court disposition of the disputed ad valorem tax claims any excess amount in the Tax Escrow not needed to cover the remaining ad valorem tax claims shall be immediately paid first to Hercules, until its claim is satisfied in full, and thereafter to the Debtors, without the necessity of further Order or notice other than notice to the Committee. The consent of Hercules is required before the disbursement of any amounts from the Tax Escrow and the

Debtors and their professionals shall fully consult with and inform Hercules with regard to the reconciliation, allowance, objections to and disposition of the ad valorem tax claims.

38. Upon the respective Closings of the Sale, the Buyer shall take title to and possession of the Assets subject only to the liabilities expressly provided for in the APA.

39. To the extent that there is any inconsistency between the first sentence and the last sentence of Section 2.1 of the APA, the first sentence of that paragraph shall control.

40. ~~39.~~ All persons and entities that are in possession of some or all of the Assets on the Closing Date are directed to surrender possession of such Assets to the Buyer or its assignee at the appropriate Closing. The provisions of this Order authorizing the sale of the Assets free and clear of Liens, Claims and other interests of any kind or nature whatsoever (other than the Permitted Encumbrances and Assumed Liabilities) shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

41. ~~40.~~ The Debtors, Buyer, and Hercules are each hereby authorized to take any and all actions necessary to consummate the APA, including, in the case of the Debtors, any actions that otherwise would require further approval by shareholders or any of the Debtors' boards of directors or boards of managers, as the case may be, without the need of obtaining such approvals. The ~~Liens~~ liens, claims and interests of Hercules shall attach to the proceeds of the Sale and all of Hercules' liens, claims and interests on any assets of the Debtors' estates not conveyed to Buyer shall survive, and the proceeds of such assets shall be paid directly to Hercules until its allowed claim under section 506(a) is satisfied in full subject to any agreement in writing reached with Hercules regarding a sharing of such proceeds.

42. ~~41.~~ A certified copy of this Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any ~~Liens and other encumbrances~~ Encumbrances of record except with respect to Assumed Liabilities or Permitted Encumbrances.

43. ~~42.~~ If any person or entity which has filed statements or other documents or agreements evidencing Encumbrances (other than Permitted Encumbrances) upon all or any portion of the Assets (~~other than statements or documents with respect to the Permitted Encumbrances which are Assumed Liabilities~~) shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all liens or interests which the person or entity has or may assert with respect to all or any portion of the Assets, the Debtors are hereby authorized and directed, and the Buyer is hereby authorized, on behalf of the Debtors and each of the Debtors' creditors, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets.

44. ~~43.~~ On the respective Closing Dates, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Debtors' interests in the Assets, subject to the occurrence of the Closing. This Order is and shall be effective as a determination that, on each Closing Date, subject to the occurrence of the Closing, all Encumbrances and other interest of any kind or nature whatsoever existing as to the Assets prior to the Closing, other than Assumed Liabilities and Permitted Encumbrances or as otherwise provided in this Order, shall have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; provided, that such Encumbrances and other interests shall attach to the proceeds of the Sale in the order of their priority, with the same

validity, force and effect which they now have as against the Assets. This Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

45. ~~44.~~ Pursuant to ~~section~~ § 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, condition, or refuse to renew any permit, license, or other similar grant relating to the operation of the Assets sold, transferred or conveyed to the Buyer on account of the filing or pendency of the Debtors' chapter 11 cases, the non-payment of any Claim, or the consummation of the transactions contemplated by the APA. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order.

M. Prohibition of Actions Against the Buyer

46. ~~45.~~ Except as expressly provided for in the APA, the Buyer shall not have any liability or other obligation of the Debtors arising under or related to any of the Assets (~~other than Assumed Liabilities and Permitted Encumbrances~~), and the Buyer is not a "successor" to the Debtors or its estate by reason of any theory of law or equity, and the Buyer shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of the Debtors and/or their estate

under any theory of law or equity. Without limiting the generality of the foregoing, except as provided in the APA or this Order, the Buyer shall not be liable for any Claims against the Debtors or any of its respective predecessors or affiliates, and the Buyer shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, under any theory of antitrust, environmental, successor or transferee liability, labor law, successor or successor employer liability (except with respect to COBRA continuation coverage) with respect to any employee benefit plan as defined in Section 3(3) of ERISA, de facto merger or joint venture, mere continuation, or substantial continuity, whether known or unknown as of the respective Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, legal or equitable, or liquidated or unliquidated, including, but not limited to, liabilities on account of warranties, intercompany loans and receivables between the Debtors and any non-debtor subsidiary, liabilities relating to or arising from any environmental laws, and any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the respective Closing.

47. ~~46.~~ Except as expressly provided for in the APA or this Order, all persons and entities, including, but not limited to, all debt security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors, holding ~~Liens~~liens, Claims or other interests of any kind or nature whatsoever other than Permitted Encumbrances and Assumed Liabilities against or in all or any portion of the Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, or senior or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' business prior to the Closing Date or the transfer of the Assets to the Buyer, hereby are forever barred, estopped and permanently enjoined from asserting against the Buyer, its affiliates and any of their successors, assigns,

assets or properties or the Assets, such persons' or entities' Lienliens, Claims or interests in and to the Assets, including, without limitation, the following actions: (a) commencing or continuing in any manner any action or other proceeding against the Buyer, its affiliates or any of their successors, assigns, assets or properties; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Buyer, its affiliates or any of their successors, assigns, assets or properties; (c) creating, perfecting or enforcing any Lienlien or other Claim against the Buyer, its affiliates or any of their successors, assigns, assets or properties; (d) asserting any setoff, right of subrogation or recoupment of any kind against any obligation due the Buyer, its affiliates or any of their successors or assigns; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order, other orders of the Court or any agreements (including the APA or actions contemplated or taken in respect thereof); (f) revoking, terminating or failing or refusing to transfer or renew any license, permit or authorization to operate any of the Assets or conduct any of the businesses operated with the Assets; or (g) refusing to transfer services provided to Debtors to the Buyer under a separate agreement between Buyer and any provider of services.

48. ~~47.~~ Buyer shall be deemed to be the owner and operator under each or any of the Debtors' Operating Carrier Number ("OCN") and Local Routing Number ("LRN"), and Buyer shall be deemed to own any and all of Debtors' SS7 point codes and existing routing including interconnection trunks and circuits and facilities provided under any tariff (such OCN, LRN, SS7 point codes, trunks, facilities, circuits and routing being among the Assets and collectively referred to as "CLEC Attributes"). Buyer may direct the transfer of any of Debtors' CLEC Attributes to any of Buyer's Interconnection Agreements ("ICAs") any Incumbent Local Exchange Carrier ("ILEC") whether such

ICA is now existing or existing in the future and Buyer may provision circuits, facilities and routing under any tariff issued by any ILEC. No ILEC may refuse to or unreasonably delay (more than 10 business days) the transfer of any CLEC Attribute to the Buyer or to the Buyer's ICA or to refuse to recognize the Buyer as the owner and operator of the CLEC Attributes associated with the Debtors or Debtors' prepetition interconnection agreements. Further, no ILEC may charge ~~and~~any fee or require any additional financial compensation for the transfer of the Debtors' CLEC Attribute to the Buyer or the Buyer's ICA.

49. ~~48.~~ The Buyer has given substantial consideration under the APA for the benefit of the Debtors, their estates and creditors. The consideration given by the Buyer shall constitute valid and valuable consideration for the releases of any potential Claims and ~~Liens of all Encumbrances~~ against Buyer or the ~~assets purchased pursuant to the Order~~ Assets, which releases shall be deemed to have been given in favor of the Buyer by all holders of Encumbrances against the Debtors or any of the Assets, other than holders of Permitted Encumbrances ~~and Encumbrances relating to Assumed Liabilities or as otherwise provided in this Order.~~ The consideration provided by the Buyer for the Assets under the APA is fair and reasonable and accordingly the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

50. ~~49.~~ Effective as of each Closing Date, the Buyer, its successors and assigns, shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead, on behalf of and for the benefit of the Buyer, its successors and assigns, for any purpose as provided in the APA as amended by this Order, with respect to the Assets conveyed to Buyer on such Closing Date, including for the following purposes: to demand and receive any and all of the Assets conveyed to Buyer on such Closing Date and to give receipts and releases for and in respect of such Assets, or any part thereof, and from time to time to institute and

prosecute in the Debtors' names, for the benefit of the Buyer, its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, its successors and assigns, may deem proper for the collection or reduction to possession of any of such Assets, and to do all acts and things with respect to such Assets which the Buyer, its successors and assigns shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

N. Contract Assignment and Other Provisions

51. ~~50.~~ Pursuant to 11 U.S.C. § 365, upon the Final Closing, the executory contracts identified in the APA as ~~Assigned Contracts as amended by the Debtors in their Notice of Winning Bidder and~~ attached schedules of as Assigned Contracts are deemed assumed by the Debtors and assigned to Buyer and Buyer shall be responsible for the applicable Cure Amounts; *provided, however,* that with respect to the Essential Contracts, assumption and assignment shall be effective as of the Initial Closing Date, and the Debtors shall be responsible for any portion of the relevant Cure Amounts that exceeds the Cure Cap (all as defined in and subject to the APA).

52. ~~51.~~ This Order, the APA, and the MSA shall be binding in all respects upon all creditors and all non-debtor parties to the Contracts, all successors and assigns of the Debtors and any of their respective affiliates and subsidiaries and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtors' bankruptcy cases or upon a conversion of such cases to cases under chapter 7 of the Bankruptcy Code in accordance with the Bankruptcy Code and other applicable law. The APA and the MSA shall not be subject to rejection or avoidance under any circumstances.

53. ~~52.~~ The APA, the MSA, and any ancillary agreements may be modified, amended, or supplemented by the parties thereto in a writing signed by the parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates;

provided further that prior notice, and an opportunity to object, shall be provided to the Creditors' Committee and Hercules.

54. ~~53.~~ The transactions contemplated by the APA are undertaken by the Buyer without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale, unless such authorization and such Sale are duly stayed pending such appeal. The Buyer is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

55. ~~54.~~ Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in (a) these chapter 11 cases, (b) any subsequent chapter 7 cases to which one or more of these chapter 11 cases may be converted or (c) any related proceeding subsequent to entry of this Order, shall conflict with or derogate from the provisions of the APA (as modified by this Order) or the terms of this Order.

56. ~~55.~~ The failure to specifically include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety; provided, however, that this Order shall govern if there is any inconsistency between the APA (including the MSA) and this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

57. ~~56.~~ The Debtors shall file a report with the Court no later than seven (7) days after the final closing of the sale under the APA, identifying the disbursements of the Sale proceeds.

58. ~~57.~~ The Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which Debtors is a party or which has been assigned by Debtors to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Assets to the Buyer, (b) interpret, implement and enforce the provisions of this Order and the APA, and (c) protect the Buyer against any ~~Liens~~liens, Claims or other interest in or against the Debtors or the Assets of any kind or nature whatsoever.

59. ~~58.~~ The Debtors and Hercules shall meaningfully consult with the Committee regarding the disposition of executory contracts under the Management Services Agreement and the APA.

60. ~~59.~~ Upon the Closing of the Sale to TNCI, the Debtors are authorized to refund the earnest money deposit made by Onvoy, Inc. ("Onvoy") to Onvoy as the Backup Bidder (as defined in the Bidding Procedures Order), within two (2) business days of the Closing Dates. Until such time, Onvoy remains the Backup Bidder subject to the terms and conditions of the Bid Procedures Order.

61. ~~60.~~ To the extent the Debtors terminates the APA as authorized under the APA or if TNCI otherwise fails to close on the Sale of the Assets, then the Debtors are hereby authorized, without need for further order of this Court, to sell the Assets to Onvoy as contemplated by this Order and that certain Asset Purchase Agreement between the Debtors and Onvoy, Inc. dated as of July 3, 2013 (the "Onvoy APA"), to which Onvoy remains bound. In such event that the Debtors elect to proceed under the Onvoy APA, all references to "Buyer" in this Order shall refer to Onvoy and all references to "APA" in this Order shall refer to the Onvoy APA.

62. ~~61.~~ Notwithstanding any other provision of this Order, the following shall apply to the affiliates of Verizon Communications Inc. (collectively, "Verizon").³ Pursuant to 11 U.S.C. § 365(d)(2), the Debtors shall have to and through September 30, 2013 to file motions to assume or reject any of their executory contracts (including for any services or facilities purportedly provided under a tariff), with the affiliates of Verizon Communications Inc. (collectively, the "Verizon Contracts") under 11 U.S.C. § 365(a). In the event that any contract with Verizon Contract is not the subject of a motion to assume filed by the Debtors on or before September 30, 2013, that contract shall be deemed rejected as of October 1, 2013, and Verizon shall be permitted to terminate any services or facilities provided to the Debtors thereunder without further notice or order of the Court. Until the Court enters an order approving an associated motion to assume, which order will provide the terms and timing of assignment to the Buyer, no services or facilities provided under any Verizon Contract will be assigned or transferred to the Buyer.

O. Resolution of the USAC Objection

63. ~~62.~~ With the consent of the Debtors, the Buyer, and the Universal Service Administrative Company ("USAC"), the inclusion of this section in this Sale Order resolves the issues set forth in USAC's Limited Objection [Docket No. 311]. For the purposes of this section, the term "Debtors" shall include any successor representative of the Debtors, including any Chapter 11 trustee, Chapter 7 trustee, liquidating trustee, or other fiduciary designated and authorized to wind down the Debtors' business operations and/or complete the liquidation of the Debtors.

i. Post-Petition USF Reporting and Payment Obligations

³ For purposes of this paragraph 61, the definition of Verizon includes, without limitation, all wholly-owned subsidiaries of Verizon Communications Inc. (including, without limitation, Verizon Services Corp., Verizon Network Integration Corp., Verizon Information Technologies LLC, Verizon Business Network Services Inc., Verizon Corporation Services Group, Inc., Verizon Select Services, Inc., MCI Communications Services, Inc. d/b/a Verizon Business Services and MCI Network Services, Inc., MCI International Services, Inc., MCI Metro Access Transmission Services LLC and the operating telephone company subsidiaries of Verizon Communications Inc.) and Cello Partnership d/b/a Verizon Wireless and its affiliates.

64. ~~63.~~ Until the Final Closing Date (as defined in the APA), the Debtors shall timely and accurately submit to USAC on behalf of the Debtors all required Quarterly Telecommunications Reporting Worksheets, also known as FCC Forms 499-Q, and all required Annual Telecommunications Reporting Worksheets, also known as FCC Forms 499-A, as such filings become due.

65. ~~64.~~ Consistent with the APA, the Buyer shall be responsible for and shall timely pay (i) any and all obligations of the Debtors to the federal Universal Service Fund (the "USF")²⁴ that may arise or accrue as to revenues received by Debtors from the provision of interstate telecommunications services after the Petition Date and up to and until the assets producing such revenues are transferred to Buyer at a Closing, including without limitation (i) any post-petition USF obligations resulting from any Annual True-Up (described below) and (ii) any and all obligations to the USF based on revenue generated by assets of the Debtors, prior to the transfer of such assets to the Buyer at a Closing, that may arise or accrue between the Initial Closing Date and the Final Closing Date (including obligations arising on the Final Closing Date). Notwithstanding the foregoing, USAC reserves the right to seek Bankruptcy Court authority to pursue the Debtors for payment of USF obligations arising after the Petition Date in the event that the Buyer fails to make the required payments.

ii. i-499 Filer IDs and SPIN Numbers Excluded Assets

66. ~~65.~~ The FCC Form 499 Filer IDs (the "Filer IDs") of Pac-West, Tex-Link, UniPoint Enhanced, nWire, and Peering Partners are Excluded Assets and shall not be transferred to the Buyer.

67. ~~66.~~ The Service Provider Identification Numbers (the "SPINs") of Pac-West and Tex-Link are Excluded Assets and shall not be transferred to the Buyer.

iii. i-Deactivation Upon Final Closing Date

²⁴ Pac-West, Tex-Link, UniPoint Enhanced, nWire, and Peering Partners are telecommunications carriers and, as such, have reporting and payment obligations to the USF.

68. ~~67.~~ Within three (3) days of each Closing Date, the Debtors shall provide to USAC a copy of the Bill of Sale evidencing the closing of each portion of the Sale.

69. ~~68.~~ Within ten (10) business days after the Final Closing Date, the Debtors shall submit to USAC all documentation required to deactivate the Filer IDs of Pac-West, Tex-Link, UniPoint Enhanced, nWire, and Peering Partners in order to establish "deactivation dates" as of, or prior to, the Final Closing Date.

70. ~~69.~~ The Debtors shall comply with the deactivation requirements (including submission of Filer ID Deactivation Request forms and copies of the Bills of Sale) as set forth on the following page of USAC's website:

<http://www.usac.org/cont/tools/merger.aspx>, provided however if any of the Debtors' submissions as set forth in this Order to USAC's website are rejected for any reason, Debtors' submissions shall be deemed filed upon forwarding a copy to kfoley@MurickOConnell.com.

71. In the event that the Debtors' electronic submission of any forms to USAC through USAC's websites is rejected by USAC, the Debtors shall contemporaneously overnight such forms with original signatures, to USAC at the following address:

Mr. Michael Lawrence, Collections Manager
Universal Service Administrative Company
2000 L Street NW, Suite 800
Washington, DC 20036

72. Nothing herein shall prohibit USAC from seeking Bankruptcy Court authority to compel the Debtors to supplement any filings that USAC has determined to be insufficient and USAC reserves all rights with respect thereto.

73. Upon request of the Debtors to counsel for USAC, USAC shall provide contact information for a USAC representative authorized to discuss the Debtors' USF payment and reporting compliance.

74. ~~70.~~ Within ten (10) business days after the Final Closing Date, the Debtors shall submit to USAC all documentation required to deactivate the SPINs of Pac-West and Tex-Link.

iv. i- Buyer to Obtain Filer ID Prior to Initial Closing Date

75. ~~71.~~ Prior to the Initial Closing Date, the Buyer (or any designee or affiliate of the Buyer that will be responsible for satisfaction of federal USF reporting and payment obligations) shall, to the extent that ~~the Buyer (or its designee or affiliate)~~ has not already obtained an FCC Form 499 Filer ID, take the necessary steps to obtain from USAC a new and distinct FCC Form 499 Filer ID as set forth on the following page of USAC's website:

<http://www.usac.org/cont/499/filer-id.aspx>

76. ~~72.~~ In the event that the Buyer names a designee or an affiliate as the responsible party for satisfaction of its USF reporting and payment obligations, the Buyer shall provide USAC and its counsel with not less than ten (10) business days' notice of the named designee, including the designee's name, address, and a specific contact person, with an email address and telephone number.

77. ~~73.~~ After the Initial Closing Date, with respect to all Assets periodically transferred to the Buyer, the Buyer shall then be responsible for (i) reporting to USAC all revenue generated by or related to those Assets as of the respective dates of acquisition by the Buyer, as required by the 1996 Telecommunications Act, P.L. 104-104, as amended (the "Telecommunications Act") and relevant federal regulations related to the USF (Title 47, Part 54 of the Code of Federal Regulations), and (ii) timely paying any and all USF obligations that may arise from same.

v. i- Annual True-Ups

78. ~~74.~~ With respect to the annual "true-up" of the Debtors' projected 2013 telecommunications revenue to their actual 2013 telecommunications revenue that will occur in 2014 (the "2014 True-Up"), in the event that the 2014 True-Up occurs prior to the Final Closing Date, the Debtors shall timely submit to USAC:

1. ~~i-~~ the Debtors' 2014 Annual Telecommunications Reporting Worksheets, also known as the 2014 FCC Forms 499-A, when due; and
2. ~~ii-~~ any other information and documentation which USAC may reasonably and customarily require in order to allow USAC to conduct the 2014 True-Ups and calculate with finality its Chapter 11 administrative claims.

79. ~~75.~~ With respect to the annual "true-up" of the Debtors' projected 2014 telecommunications revenue to their actual 2014 telecommunications revenue that will occur in 2015 (the "2015 True-Up"), if applicable, in the event that the 2015 True-Up occurs prior to the Final Closing Date, the Debtors shall timely submit to USAC:

1. ~~i-~~ the Debtors' 2015 Annual Telecommunications Reporting Worksheets, also known as the 2015 FCC Forms 499-A, when due; and
2. ~~ii-~~ any other information and documentation which USAC may reasonably and customarily require in order to allow USAC to conduct the 2015 True-Ups and calculate with finality its Chapter 11 administrative claims.

80. In the event that the 2014 True-Up and/or the 2015 True-Up occurs after the Final Closing Date, the Buyer shall submit to USAC:

1. the Debtors' 2014 and 2015 Annual Telecommunications Reporting Worksheets, also known as the 2014 and 2015 FCC Forms 499-A, when due, as applicable; and
2. any other information and documentation which USAC may reasonably and customarily require in order to allow USAC to conduct the 2014 and 2015 True-Ups and calculate with finality its Chapter 11 administrative claims; and
3. The Buyer acknowledges that it is the Buyer's obligation to use reasonable efforts to obtain the information needed to accurately complete the Debtors' 2014 and 2015 Annual Telecommunications Reporting Worksheets, also known as the 2014 and 2015 FCC Forms 499-A, as applicable. USAC acknowledges that the Buyer may not have access to all of the accounting and other data necessary to file such forms on behalf of the Debtors and that the Buyer need only certify that the information provided thereon is true and correct to the best of its knowledge, information and belief.

81. ~~76.~~ The Debtors and the Buyer acknowledge that there is a one year revision deadline for downward revisions of FCC Forms 499-A and nothing herein shall abrogate that deadline.

82. ~~77.~~ In the event that submission of any FCC Form 499-A (including without limitation any amended FCC Form 499-A) by or on behalf of the Debtors results in any upward adjustment of the Debtors' USF obligations for any pre-petition revenue period, the Debtors shall be responsible for such USF obligations.

83. ~~78.~~ In the event that submission of any FCC Form 499-A (including without limitation any amended FCC Form 499-A) by or on behalf of the Debtors results in any upward adjustment of the Debtors' USF obligations for any post-petition revenue period, the Buyer shall be responsible for and shall timely pay such USF obligations when invoiced by USAC.

84. ~~79.~~ In the event that submission of any FCC Form 499-A (including without limitation any amended FCC Form 499-A) by or on behalf of the Debtors results in a "net credit" of the Debtors' USF obligations for any pre-petition revenue period (i.e., a remaining credit corresponding to the pre-petition period after full satisfaction of all of the Debtors' unpaid pre-petition USF obligations), then the Debtors shall be entitled to that net credit.

85. ~~80.~~ In the event that submission of any FCC Form 499-A (including without limitation any amended FCC Form 499-A) by or on behalf of the Debtors results in a "net credit" of the Debtors' USF obligations for any post-petition revenue period (i.e., a remaining credit corresponding to the post-petition period after full satisfaction of all of the Debtors' unpaid post-petition USF obligations), then the Buyer shall be entitled to that net credit.

P. Miscellaneous

86. ~~81.~~ Nothing in this Sale Order or in connection with the Sale shall prohibit, limit or restrict USAC's right to file requests for payment of administrative claims or to amend its proofs of claim for any reason.

87. ~~82.~~ Nothing in this Sale Order or in connection with the Sale shall prohibit, limit or restrict USAC's rights to (i) audit the Debtors' reported contributor revenues, including with respect to

pre-sale and pre-petition periods, (ii) assess and invoice any USF obligations resulting from such audit, and (iii) pursue all of USAC's rights related to any such audit, including, without limitation, filing claims or amending previously filed claims against the Debtors.

88. ~~83.~~ All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

89. ~~84.~~ This Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(g), 6004(h), 6006(d), 7062, 9014 or otherwise. The Debtors and the Buyer are authorized to close the Sale immediately upon entry of this Order.

90. ~~85.~~ To the extent that this Order is inconsistent with any prior order or pleading with respect to the Sale Motion in this chapter 11 case, the terms of this Order shall govern.

###

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Document 2 ID	interwovenSite://IMANAGE/JWDOCS/9397950/5
Description	#9397950v5<JWDOCS> - Final Sale Order
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	62
Deletions	92
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	158

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