

(collectively the “Debtors” or “Plaintiffs”) hereby moves this Court for entry of an order pursuant to Fed. R. Bankr. Pro. 9019, authorizing the Debtors to enter into a settlement agreement with Primus Telecommunications, Inc. (“Defendant”) and approving such settlement agreement as set forth in this amended motion (the “Motion”) for the resolution of issues between the Debtors and the Defendant at issue in Adversary Proceeding No. 13-01142. In support of the Motion, the Debtors respectfully represent as follows:

I. BACKGROUND FACTS AND EVENTS

1. On March 28, 2013, (the “Petition Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors are managing their affairs as debtors-in-possession.

2. On October 17, 2013, the Debtors filed their Complaint against the Defendant [Adv. Dckt. No. 1] seeking recovery pursuant to § 542(b) of the Bankruptcy Code, and for breach of contract, *quantum meruit*, and unjust enrichment, stemming from unpaid intercarrier compensation, thus initiating Adversary Proceeding No. 13-01142 (“Adversary Proceeding”).

3. In the Complaint, the Debtors alleged that the Defendant owed compensation to the Debtors of at least \$11,442.29, and also requested an award of attorneys’ fees and costs associated with the action, and that the amount owed was recoverable by the Debtors pursuant to § 542(b) of the Bankruptcy Code.

4. The Debtors and the Defendant have been engaged in settlement discussions and have now reached a settlement of this action.

II. RELIEF REQUESTED

5. By this Motion, the Debtors seek an order of this Court authorizing the Debtors to enter into a settlement agreement (the “Settlement Agreement”) with the Defendant, and

approving such Settlement Agreement for the resolution of all issues raised between the Debtors and the Defendant.

III. THE SETTLEMENT

6. The Settlement Agreement provides generally that the Defendant will make a settlement payment of \$15,000 to the Debtors. The Settlement Agreement also provides that the Debtors, in exchange for the settlement payment by the Defendant, will dismiss the Complaint.¹ In addition, the Settlement Agreement preserves any rights that the Defendant may have pursuant to any proofs of claim it may have filed in the Debtors' bankruptcy cases or that are listed in the Debtors' filed schedules. Pursuant to the Settlement Agreement, the Debtors and the Defendant will execute mutual releases, releasing certain claims, except for claims related to the Settlement Agreement.

7. Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") grants the Court authority to approve this settlement of claims and controversies after notice and a hearing. Specifically, Rule 9019 provides in pertinent part that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Under this authority, the Third Circuit has emphasized that "to minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (citations omitted). In addition, courts have recognized that the approval of a proposed compromise and settlement is committed to the sound discretion of the bankruptcy court. *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Rivercity v. Herpel (In re Jackson Brewing Co.)* 624 F.2d 599, 602-03 (5th Cir. 1980) (decided under Bankruptcy Act). Settlements are considered a "normal part of the process

¹ Pursuant to Local Rule 9019(c)(2), a proposed order of dismissal for entry in Adversary Proceeding No. 13-01142 is attached hereto as Exhibit A.

of reorganization” and a “desirable and wise method of bringing to a close proceedings otherwise lengthy, complicated and costly.” *Jackson Brewing*, 624 F.2d at 602 (citations omitted).

8. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether “the compromise is fair, reasonable, and in the interests of the estate.” *In re Marvel Entertainment Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (quoting *In re Louise’s*, 211 B.R. 798, 801(D. Del. 1997)). To reach such a determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. *Martin*, 91 F.3d at 393. In striking this balance, the court should consider the following factors:

- a. The probability of success in the litigation;
- b. The complexity, expense and likely duration of the litigation;
- c. The possibilities of collecting on any judgment which might be obtained;
- d. All other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise; and
- e. Whether the proposed compromise is fair and equitable to the Debtors, their creditors, and other parties in interest.

See Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425 (1968). *See also Martin*, 91 F.3d at 393.

9. Basic to the process of evaluating proposed settlements is “the need to compare the terms of the compromise with the likely rewards of litigation.” *TMT Trailer Ferry*, 390 U.S. at 425. Generally, the role of the bankruptcy court in evaluating a proposed settlement is not to decide the issues in dispute, but rather, to determine whether the settlement is fair and equitable as a whole. *Id.* at 424; *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). In addition, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. *See Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage*

Corp.), 68 F.3d 914, 917 (5th Cir. 1995). First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.* Second, the court should consider “the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Id.* at 918 (citations omitted).

10. The Debtors believe that the Settlement Agreement meets the above standards and is reasonable, fair, and equitable, as set out above. The Settlement Agreement is, in the business judgment of the Debtors, in the best interest of the Debtors’ creditors and their estates. In making such a judgment, the Debtors have reviewed documents relevant to defenses proposed to be raised to the Complaint submitted by the Defendant. The Debtors have also weighed the cost of further litigation and the likelihood of ultimate recovery in the Adversary Proceeding with respect to the remaining payments. Moreover, the Settlement Agreement is the product of arms-length negotiations between the Debtors and the Defendant. For all of these reasons, the Debtors believe that approval of the Settlement Agreement is in the best interest of the Debtors and the Debtors’ creditors.

WHEREFORE, PREMISES CONSIDERED the Debtors respectfully request that this Court grant the relief requested herein; that the Court permit the Debtors to enter into the Settlement Agreement; and grant such other and further relief to the Debtors as is just and proper.

Dated: November 26, 2013.

Respectfully submitted,

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By: /s/ Jennifer F. Wertz

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COUNSEL FOR DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November 2013, a true and correct copy of the foregoing has been served electronically via the Court's CM/ECF electronic notification system to all parties requesting same; I further certify that on the 27th day of November 2013, a true and correct copy of the foregoing was served via United States mail, postage prepaid, to the following on the attached Service List.

/s/ Jennifer F. Wertz _____

Jennifer F. Wertz

**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	§	CASE NO. 13-10577
COMMUNICATIONS, LLC	§	
	§	
DEBTORS	§	Jointly Administered Under
	§	
EIN: 45-1144038; 68-0383568; 74-2729541;	§	CASE NO. 13-10570
20-3399903; 74-3023729; 38-3659257; 37-	§	(Chapter 11)
1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200	§	
AUSTIN, TEXAS 78730	§	

**ORDER AUTHORIZING AND APPROVING SETTLEMENT
BETWEEN DEBTORS AND PRIMUS TELECOMMUNICATIONS, INC. OF
ADVERSARY NO. 13-01142 PURSUANT TO FED. R. BANKR. PRO. 9019**

CAME ON FOR CONSIDERATION the Motion for an Order Pursuant to Fed. R. Bankr. Pro. 9019 Authorizing and Approving Settlement Agreement Between Debtors and Primus Telecommunications, Inc. of Adversary No. 13-01142 ("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" or "Plaintiffs"); and Primus Telecommunications, Inc. ("Defendant"); and the Court having reviewed the Motion and considered the main elements of the Settlement Agreement (as defined in the Motion) finds good cause for the relief granted herein. It is therefore

ORDERED that the Motion for an Order Pursuant to Fed. R. Bankr. Pro. 9019 Authorizing and Approving Settlement Agreement (herein "Motion") is hereby granted in its entirety;

ORDERED that the Debtors are authorized to enter into the Settlement Agreement with Primus Telecommunications, Inc. ("Defendant");

ORDERED that, pursuant to Fed. R. Bankr. Pro. 9019, the Settlement Agreement is hereby approved.

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APPROVED:

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By: /s/ Jennifer F. Wertz

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COUNSEL FOR THE DEBTORS

**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

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

PLAINTIFFS

ADV. PRO. NO. 13-01142

PRIMUS TELECOMMUNICATIONS,
INC.,

DEFENDANT.

ORDER NONSUITING ADVERSARY PROCEEDING WITH PREJUDICE

CAME ON TO BE CONSIDERED the Motion for an Order Pursuant to Fed. R. Bankr. Pro. 9019 Authorizing and Approving Settlement Agreement Between the Debtors and Primus Telecommunications, Inc. ("Motion") filed in 13-10570; *UPH Holdings, Inc., et al.* The Court, having considered same, and found that notice of the Motion was proper, is of the opinion that the Motion should be, and is hereby GRANTED; it is therefore

ORDERED that this adversary proceeding is hereby dismissed with prejudice.

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Prepare and submitted by:

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