SWIDLER BERLIN LLP

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WASHINGTON, D.C. 20007-5116
PHONE 202.424.7500
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August 30, 2005

**BY OVERNIGHT DELIVERY**

Blanca S. Bayó
Commission Clerk and Administrator Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

050579 - TX
050580 - TI

**Re: Application of Pac-West Telecomm, Inc. for Authority to Provide Alternative Local Exchange Service Within the State of Florida and Pac-West Telecomm, Inc.'s IXC Registration**

Dear Ms. Bayó:

On behalf of Pac-West Telecomm, Inc., enclosed for filing are an original and six (6) copies of the application for authority to provide alternative local exchange service and an original and six (6) copies of the IXC registration. Also enclosed is a check in the amount of $250.00 to cover the application filing fee.

Please date-stamp the extra copy of this filing and return it in the enclosed self-addressed, stamped envelope. Should you have any questions please do not hesitate to contact the undersigned.

Respectfully submitted,

Brian M. McDermott
Danielle C. Burt
Counsel for Pac-West Telecomm, Inc.

Enclosures

9240209v1

DOCUMENT NUMBER-DATE
08351 AUG 31 05
FPSC-COMMISSION CLERK

SAFEGUARD LITHO USA SFSL3 CK7S08113L

SWIDLER BERLIN LLP 3000 K STREET, N.W. SUITE 300.WASHINGTON, DC 20007 CHECK NO.: D 158709

| REF. # | INV. # | DATE | INVOICE AMOUNT | INVOICE DESCRIPTION | AMOUNT PAID |
|---|---|---|---|---|---|
| 235610 | ST082605 | 08-26-05 | 250.00 | State certification | 250.00 |

CUSTOMER NO.

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER - SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES

SWIDLER BERLIN LLP
3000 K STREET, N.W. SUITE 300
WASHINGTON, DC 20007

CHECK DATE
08/26/05

CHECK NO. D 158709

Wachovia Bank DC Operating
1300 I Street, N.W.
12th Floor
Washington, DC 20005

CHECK AMOUNT
250.00*******

TWO HUNDRED FIFTY AND 00/100 Dollars

TWO SIGNATURES REQUIRED ON CHECK OVER $25,000.00

PAY TO THE ORDER OF Florida Public Service Commission

OPERATING ACCOUNT

THIS DOCUMENT CONTAINS ... DISAPPEARS WITH HEAT.

** **FLORIDA PUBLIC SERVICE COMMISSION** **

**DIVISION OF REGULATORY OVERSIGHT**
**CERTIFICATION SECTION**

# APPLICATION FORM
**for**
# AUTHORITY TO PROVIDE ALTERNATIVE LOCAL EXCHANGE SERVICE WITHIN THE STATE OF FLORIDA

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## Instructions

This form is used as an application for an original certificate and for approval of the assignment or transfer of an existing certificate. In the case of an assignment or transfer, the information provided shall be for the assignee or transferee (See Page 12).

Print or type all responses to each item requested in the application and appendices. If an item is not applicable, please explain why.

Use a separate sheet for each answer which will not fit the allotted space.

Once completed, submit the original and six (6) copies of this form along with a non-refundable application fee of **$250.00** to:

**Florida Public Service Commission**
***Division of Records and Reporting***
**2540 Shumard Oak Blvd.**
**Tallahassee, Florida 32399-0850**
**(850) 413-6770**

If you have questions about completing the form, contact:

**Florida Public Service Commission**
**Division of Regulatory Oversight**
**Certification Section**
**2540 Shumard Oak Blvd.**
**Tallahassee, Florida 32399-0850**
**(850) 413-6480**

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## APPLICATION

1. **This is an application for √ (check one):**

   ( √ ) **Original certificate** (new company).

   ( ) **Approval of transfer of existing certificate:** Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority.

   ( ) **Approval of assignment of existing certificate:** Example, a certificated company purchases an existing company and desires to retain the certificate of authority of that company.

   ( ) **Approval of transfer of control:** Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. **Name of company:**

   Pac-West Telecomm, Inc.

3. **Name under which the applicant will do business (fictitious name, etc.):**

   Pac-West Telecomm, Inc.

4. **Official mailing address (including street name & number, post office box, city, state, zip code):**

   1776 W. March Lane, Suite 250
   Stockton, CA 95207

5. **Florida address (including street name & number, post office box, city, state, zip code):**

Pac-West does not have an office in Florida.

6. **Structure of organization:**

( ) Individual
( √ ) Foreign Corporation
( ) General Partnership
( ) Other
( ) Corporation
( ) Foreign Partnership
( ) Limited Partnership

Please see Exhibit 1 for a copy of Pac-West's Articles of Incorporation.

7. **If individual, provide:**

Name: N/A

Title:

Address:

City/State/Zip:

Telephone No.: Fax No.:

Internet E-Mail Address:

Internet Website Address:

8. **If incorporated in Florida, provide proof of authority to operate in Florida:**

(a) **The Florida Secretary of State corporate registration number:**

N/A

9. **If foreign corporation, provide proof of authority to operate in Florida:**

(a) The Florida Secretary of State corporate registration number:

**F05000004643**
Please see Exhibit 2 for a copy of Pac-West's Certificate of Authority to Transact Business in Florida.

**10. If using fictitious name-d/b/a, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida:**

(a) The Florida Secretary of State fictitious name registration number:

N/A

**11. If a limited liability partnership, provide proof of registration to operate in Florida:**

(a) The Florida Secretary of State registration number:

N/A

**12. If a partnership, provide name, title and address of all partners and a copy of the partnership agreement.**

Name: N/A

Title:

Address:

City/State/Zip:

Telephone No.: Fax No.:

Internet E-Mail Address:

Internet Website Address:

**13. If a foreign limited partnership, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS), if applicable.**

(a) The Florida registration number: N/A

**14. Provide F.E.I. Number (if applicable):** 68-0383568

**15. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:**

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. Provide explanation.

None.

(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

None.

**16. Who will serve as liaison to the Commission with regard to the following?**

(a) The application:

Name: Brian McDermott or Danielle C. Burt

Title: Counsel for Pac-West Telecomm, Inc.

Address: 3000 K Street, N.W, Suite 300

City/State/Zip: Washington, D.C. 20007-5116

Telephone No.: (202) 424-7500 Fax No.: (202) 424-7647

Internet E-Mail Address: bmmcdermott@swidlaw.com or dcburt@swidlaw.com

Internet Website Address: www.swidlaw.com

(b) Official point of contact for the ongoing operations of the company:

Name: Henry R. Carabelli

Title: President and Chief Executive Officer

Address: 1776 W. March Lane, Suite 250

City/State/Zip: Stockton, CA 95207

Telephone No.: (800) 722-9378 Fax No.: (209) 926-4444

Internet E-Mail Address: hcarabel@pacwest.com

Internet Website Address: www.pacwest.com

(c) Complaints/Inquiries from customers:

Name: Lynne Martinez/Kim Rego

Title: Director Government Affairs/Director of Customer Relations

Address: 1776 W. March Lane, Suite 250/4210 Coronado Avenue

City/State/Zip: Stockton, CA 95207/Stockton, CA 95204

Telephone No.: (209) 926-4339/(209) 926-4214 Fax No.: (209) 926-4585/(209) 926-4444

Internet E-Mail Address: lmartin@pacwest.com/krego@pacwest.com

Internet Website Address: www.pacwest.com

**17. List the states in which the applicant:**

(a) has operated as an alternative local exchange company.

Pac-West previously held authority to provide services in: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia. It previously surrendered its authorization in all states except Arizona, California, Colorado, Idaho, New Mexico, Nevada, Oregon, Utah and Washington. Pac-West has current operations in Arizona, California, Nevada, Oregon, Utah and Washington.

(b) has applications pending to be certificated as an alternative local exchange company.

Pac-West has filed applications to provide competitive local exchange services in

the District of Columbia, Louisiana, Maryland, and Virginia.

(c) is certificated to operate as an alternative local exchange company.

Arizona, California, Colorado, Idaho, New Mexico, Nevada, Oregon, Utah and Washington.

(d) has been denied authority to operate as an alternative local exchange company and the circumstances involved.

None.

(e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

Pac-West is not currently involved in any litigation with a customer of its tariff services. Pac-West is involved in disputes with other carriers. Those inter-carrier disputes are related to inter-carrier compensation, the terms of interconnection, or the arbitration of interconnection agreements. Pac-West has in the normal course of business been a party to regulatory proceedings. The status of any legal proceedings is provided in Pac-West's Form 10-K. A copy of the legal proceedings information contained in the Form 10-K is attached hereto as Exhibit 5.

(f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

Pac-West has in the normal course of business been a party to regulatory proceedings. A copy of the legal proceedings information contained in the Form 10-K is attached hereto as Exhibit 5.

**18. Submit the following:**

**A. Managerial capability: give resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.**

Please see Exhibit 3.

**B. Technical capability: give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.**

Please see Exhibit 3.

## C. Financial capability.

The application **should contain** the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

Please see Exhibit 4.

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer affirming that the financial statements are true and correct and should include:

1. the balance sheet:

2. income statement: and

3. statement of retained earnings.

**NOTE**: *This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.*

Further, the following (which includes supporting documentation) should be provided:

1. **written explanation** that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.

2. **written explanation** that the applicant has sufficient financial capability to maintain the requested service.

3. **written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.

Please see Exhibit 4.

**THIS PAGE MUST BE COMPLETED AND SIGNED**

## APPLICANT ACKNOWLEDGMENT STATEMENT

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of $50 is required.

2. **APPLICATION FEE:** I understand that a non-refundable application fee of $250.00 must be submitted with the application.

UTILITY OFFICIAL:

John Sumpter
Print Name

Signature

Vice President of Regulatory
Title

8/25/05
Date

209-926-3136
Telephone No.

209-925-4585
Fax No.

Address: 1776 March Lane, Suite 250

Stockton, CA 95207

**THIS PAGE MUST BE COMPLETED AND SIGNED**

## AFFIDAVIT

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

**Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."**

UTILITY OFFICIAL:

John Sumpter
Print Name

Signature

Vice President of Regulatory
Title

8/25/05
Date

209-926-3136
Telephone No.

209-926-4585
Fax No.

Address: 1776 March Lane, Suite 250

Stockton, CA 95207

# EXHIBITS

| | |
|---|---|
| EXHIBIT 1 | Articles of Incorporation |
| EXHIBIT 2 | Certificate of Authority to Transact Business |
| EXHIBIT 3 | Managerial and Technical Qualifications |
| EXHIBIT 4 | Financial Qualifications |
| EXHIBIT 5 | Legal Proceedings |

# EXHIBIT 1

## Articles of Incorporation

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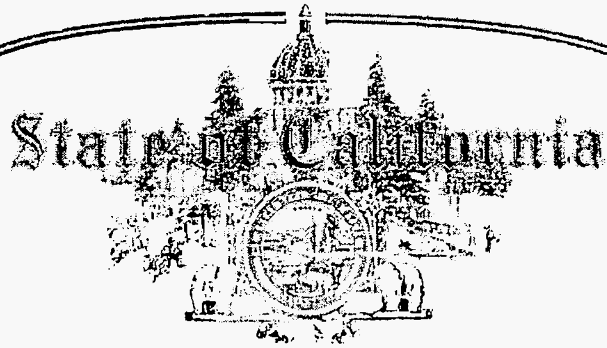
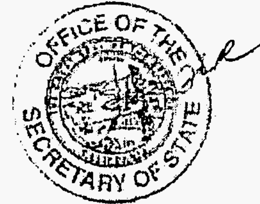



**SECRETARY OF STATE**

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

***IN WITNESS WHEREOF***, I execute this certificate and affix the Great Seal of the State of California this day of

SEP 5 2000

Bill Jones

Secretary of State

Sec/State Form CE- rev. 8/98)

OSP 98 13524

A0551280

ENDORSED - FILED
IN THE OFFICE OF THE
SECRETARY OF STATE

SEP -5 2000

BILL JONES, SECRETARY OF STATE

**CERTIFICATE OF AMENDMENT OF AMENDED AND RESTATED ARTICLES OF INCORPORATION OF PAC-WEST TELECOMM, INC.**

WALLACE W. GRIFFIN and DENNIS V. MEYER certify that:

1. They are the President and Assistant Secretary, respectively, of PAC-WEST TELECOMM, INC., a California corporation.

2. The Articles of Incorporation of this corporation are amended and restated in their entirety to read as follows:

## ARTICLE I

The name of this Corporation is Pac-West Telecomm, Inc.

## ARTICLE II

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

## ARTICLE III

Section 1. Authorized Shares. The corporation is authorized to issue two classes of shares, to be designated common and preferred, respectively. The corporation is authorized to issue 100,000,000 shares of common stock, par value $0.001 per share, and 10,000,000 shares of preferred stock.

Section 2. Preferred Shares. The shares of preferred stock may be issued in any number of series, as determined by the Board of Directors. The Board may, by resolution, establish the designation and number of shares of any such series, and may determine, alter or revoke the rights, preferences and restrictions pertaining to any wholly unissued series. The Board may thereafter, by resolution, alter the number of shares of any such series.

## ARTICLE IV

Section 1. Elimination of Director Liability. The liability of directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. Indemnification. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through Bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, to the fullest extent permissible under California law.

Section 3. Effect of Amendment. Any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any right or protection of an agent of this Corporation existing at the time of such amendment, repeal or modification.

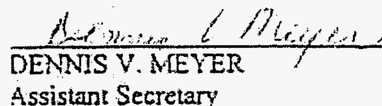
3. The foregoing amendment and restatement of Articles of Incorporation was duly approved by the Board of Directors of this Corporation.

4. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the California Corporations Code. The total number of outstanding shares of this Corporation entitled to vote with respect to the amendment was 35,863,543 shares, the favorable vote of a majority of such shares is required to approve the amendment, and the number of such shares voting in favor of the amendment equaled or exceeded the required vote. All outstanding stock is common stock, no shares of preferred stock are outstanding.

5 Executed on 8/30/, 2000, at Stockton, California.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

WALLACE W. GRIFFIN
President



DENNIS V. MEYER
Assistant Secretary

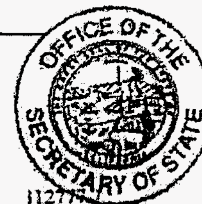


Exhibit A

**AMENDED AND RESTATED**
**ARTICLES OF INCORPORATION**
**OF**
**PAC-WEST TELECOMM, INC.**

ARTICLE I

The name of this Corporation is Pac-West Telecomm, Inc.

ARTICLE II

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE III

A. AUTHORIZED SHARES

The total number of shares of capital stock which the Corporation has authority to issue is 1,675,000 shares, consisting of:

(1) 175,000 shares of Class A Participating Preferred Stock, par value $.01 per share (the "Class A Preferred"); and

(2) 1,500,000 shares of Common Stock, par value $.01 per share (the "Common Stock").

## B. CAPITAL STOCK

Section 1. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary), each holder of a share of Class A Preferred (a "Share") shall be entitled to be paid, before any Distribution or other payment is made upon any Junior Securities, an amount in cash equal to the amount which the holders of Class A Preferred are entitled to be paid pursuant to Section 3 hereof. Not less than 30 days prior to the payment date stated therein, the Corporation shall mail written notice of any such liquidation, dissolution or winding up to each record holder of Class A Preferred, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Share in connection with such liquidation, dissolution or winding up. The consolidation or merger of the Corporation with or into any other entity or entities in which the Corporation is not the surviving entity, or any other form of recapitalization or reorganization affecting the Corporation in which the Corporation is not the surviving entity, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 1, except for any such merger, consolidation, recapitalization or reorganization which is effected solely to change the state of incorporation of the Corporation.

Section 2. Priority of Class A Preferred on Distributions. So long as there is any Unpaid Yield or Unreturned Original Cost outstanding, without the prior written consent of the holders of a majority of the outstanding shares of Class A Preferred, the Corporation shall not, nor shall it permit any Subsidiary to, make any Distribution, directly or indirectly, with respect to any Class A Preferred or Junior Securities other than in accordance with the provisions of Section 3 below, except for (i) repurchases of Common Stock from present or former employees or consultants of the Corporation and its Subsidiaries upon termination of employment or consultancy in accordance with arrangements approved by the Corporation's board of directors and so long as no Event of Noncompliance is in existence immediately prior to or is otherwise caused by any such repurchase, (ii) any redemption or repurchase of Class A Preferred or Common Stock pursuant to any right of first refusal, first offer or similar right in favor of the Corporation approved by the Corporation's board of directors so long as no Event of Noncompliance is in existence immediately prior to or is otherwise caused by any such repurchase, and (iii) dividends payable in shares of Common Stock issued upon the outstanding shares of Common Stock in compliance with the provisions of Section 8 below.

Section 3. Distributions. At the time of each Distribution, such Distribution shall be made to the holders of Class A Preferred and Common Stock in the following priority:

3A. Distribution of Unpaid Yield. The holders of Class A Preferred shall be entitled to receive all or a portion of such Distribution (ratably among such holders based upon the aggregate Unpaid Yield of the Shares of Class A Preferred held by each such holder as of the time of such Distribution) equal to the aggregate Unpaid Yield on the outstanding shares of Class A Preferred as of the time of such Distribution, and no Distribution or any portion thereof shall be made under paragraphs 3B or 3C below until the entire amount of the Unpaid Yield on the outstanding Shares of Class A Preferred as of the time of such Distribution has been paid in full. The Distributions made pursuant to this paragraph 3A to holders of Class A Preferred shall constitute a payment of Yield on the Class A Preferred.

3B. Distribution of Unreturned Original Cost. After the required amount of a Distribution has been made in full pursuant to paragraph 3A above, the holders of Class A Preferred shall be entitled to receive all or a portion of such Distribution (ratably among such holders based upon the aggregate Unreturned Original Cost of the Shares of Class A Preferred held by each such holder as of the time of such Distribution) equal to the aggregate Unreturned Original Cost of the outstanding shares of Class A Preferred as of the time of such Distribution, and no Distribution or any portion thereof shall be made under paragraph 3C below until the entire amount of the Unreturned Original Cost of the outstanding Shares of Class A Preferred as of the time of such Distribution has been paid in full. The Distributions made pursuant to this paragraph 3B to holders of Class A Preferred shall constitute a return of Original Cost of the Class A Preferred.

3C. Remaining Distributions. After the required amount of a Distribution has been made pursuant to paragraphs 3A and 3B above, the holders of Class A Preferred and Common Stock as a group, shall be entitled to receive the remaining portion of such Distribution (ratably among such holders based upon the aggregate number of shares of Class A Preferred and Common Stock held by each such holder as of the time of such Distribution).

Section 4. Redemptions at the Option of the Holders of Class A Preferred.

4A. Redemption with Proceeds of Public Offerings.

(i) Upon the request of any holder of Class A Preferred delivered at least 30 days prior to the expected consummation of any Public Offering as set forth in the notice delivered by the Corporation pursuant to subparagraph 4A(iii) below, the Corporation shall apply the net cash proceeds from any Public Offering remaining after deduction of all discounts, underwriters' commissions and other reasonable expenses to redeem the Shares of Class A Preferred requested to be redeemed by such holder at a price per Share determined pursuant to paragraph 4C below; provided that the Corporation shall not be required to redeem any Class A Preferred pursuant to this subparagraph 4A(i) in the event the Corporation receives a Conversion Notice (as defined below) prior to the consummation of such Public Offering from the holders of a majority of the outstanding Class A Preferred pursuant to subparagraph 5A(ii) below.

(ii) Upon the request of the holders of a majority of the outstanding Class A Preferred delivered at least 15 days prior to the expected consummation of any Public Offering as set forth in the notice delivered by the Corporation pursuant to subparagraph 4A(iii) below, the Corporation shall apply the net cash proceeds from any Public Offering remaining after deduction of all discounts, underwriters' commissions and other reasonable expenses to redeem all outstanding Shares of Class A Preferred at a price per Share determined pursuant to paragraph 4C below.

(iii) The Corporation shall send written notice of any proposed Public Offering and the expected date of the consummation of such Public Offering by reputable overnight courier service (charges prepaid) to each record holder of Class A Preferred not less than 60 days prior to the Corporation's expected date of the consummation of such Public Offering. The

Corporation shall provide written notice of any redemption of Shares of Class A Preferred pursuant to paragraph 4A to all holders of Class A Preferred within 3 days after the receipt of any redemption notice delivered pursuant to this paragraph 4A. Any redemption pursuant to this paragraph 4A shall take place on a date fixed by the Corporation, which date shall not be more than three days after the Corporation's receipt of the proceeds of any Public Offering. Except as to the Shares so redeemed, redemptions of Shares pursuant to this paragraph 4A shall not relieve the Corporation of its obligation to redeem Shares pursuant to paragraph 4B below.

4B. Optional Redemptions by Holders. At any time and from time to time after December 31, 2003, the holders of a majority of the outstanding Class A Preferred may request redemption of all or any portion of their Shares of Class A Preferred by delivering written notice of such request to the Corporation. Within five days after receipt of such request, the Corporation shall give written notice of such request to all other holders of Class A Preferred, and such other holders may request redemption of all or any portion of their Shares of Class A Preferred by delivering written notice to the Corporation within ten days after receipt of the Corporation's notice. The Corporation shall be required to redeem all Shares with respect to which such redemption requests have been made at a price per Share determined pursuant to paragraph 4C below within 60 days after receipt of the initial redemption request therefor. Except as to the Shares so redeemed, redemptions pursuant to this paragraph 4B shall not relieve the Corporation of its obligation to redeem Shares pursuant to paragraph 4A above.

4C. Redemption Payments. For each Share which is to be redeemed hereunder, the Corporation shall be obligated on the Redemption Date to pay to the holder thereof (upon surrender by such holder at the Corporation's principal office of the certificate representing such Share) an amount in immediately available funds equal to the Unreturned Original Cost plus Unpaid Yield with respect to such Share. Notwithstanding anything herein to the contrary, if the funds of the Corporation (i) legally available pursuant to the General Corporation Law of California for the redemption of Shares on any Redemption Date or (ii) permitted to be used for the redemption of Shares pursuant to any debt financing agreement of the Corporation on any Redemption Date are in either case insufficient to redeem the total number of Shares to be redeemed on such date, those funds which are available pursuant to the California General Corporation Law and permitted to be used pursuant to any such debt financing agreement of the Corporation shall be used to redeem the maximum possible number of Shares pro rata among the holders of the Shares to be redeemed based upon the aggregate Unreturned Original Cost plus Unpaid Yield of the Shares held by each such holder. At any time thereafter when additional funds of the Corporation are available pursuant to the foregoing sentence for the redemption of Shares, such funds shall immediately be used to redeem the balance of the Shares which the Corporation has become obligated to redeem on any Redemption Date but which it has not redeemed.

4D. Partial Redemptions. In case fewer than the total number of Shares represented by any certificate are redeemed, a new certificate representing the number of unredeemed Shares shall be issued to the holder thereof without cost to such holder within three business days after surrender of the certificate representing the redeemed Shares.

4E. Dividends After Redemption Date. No Share shall be entitled to any dividends accruing after the date on which the amount determined pursuant to paragraph 4C above is paid to the holder of such Share. On such date, all rights of the holder of such Share shall cease, and such Share shall no longer be deemed to be issued and outstanding.

4F. Redeemed or Otherwise Acquired Shares. Any Shares which are redeemed or otherwise acquired by the Corporation shall be canceled and retired and shall not be reissued, sold or transferred.

4G. Other Redemptions or Acquisitions. The Corporation shall not, nor shall it permit any Subsidiary to, redeem or otherwise acquire any Shares of Class A Preferred, except as expressly authorized herein or except pursuant to a purchase offer made pro-rata to all holders of Class A Preferred on the basis of the number of Shares owned by each such holder.

Section 5. Conversion at the Option of the Holders of Class A Preferred.

5A. Conversion Obligations.

(i) In connection with the consummation of a Public Offering, any holder of Class A Preferred may cause all Shares of Class A Preferred held by such holder to be converted to Conversion Stock upon the consummation of such Public Offering by delivering written notice to the Corporation (a "Conversion Notice") at least 30 days prior to the expected consummation of such Public Offering as set forth in the notice delivered by the Corporation pursuant to subparagraph 4A(iii) above; provided that the Corporation shall not be required to convert any Class A Preferred pursuant to this subparagraph 5A(i) in the event the Corporation receives a redemption notice from the holders of a majority of the outstanding Class A Preferred pursuant to subparagraph 4A(ii) above.

(ii) In connection with the consummation of a Public Offering, the holders of a majority of the outstanding Shares of Class A Preferred may cause all outstanding Shares of Class A Preferred to be converted to Conversion Stock upon the consummation of such Public Offering by delivering written notice to the Corporation (also a "Conversion Notice") at least 15 days prior to the expected consummation of such Public Offering as set forth in the notice delivered by the Corporation pursuant to subparagraph 4A(iii) above.

(iii) The Corporation shall provide written notice of the Conversion of any Shares of Class A Preferred to all holders of Class A Preferred at least five days prior to such conversion.

5B. Conversion Procedure.

(i) Upon delivery of a Conversion Notice, each Share of Class A Preferred (including any fraction of a Share) to which such conversion notice relates shall convert into a number of shares of Conversion Stock computed by dividing the Unreturned Original Cost

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plus Unpaid Yield with respect to such Share by the price per share of Conversion Stock to the public in such Public Offering (the "Offering Price").

(ii) Each conversion of Class A Preferred shall be deemed to have been effected upon the consummation of such Public Offering. At such time, the rights of the holder of such Class A Preferred as a holder of Class A Preferred shall cease and the Person or Persons in whose name or names any certificate or certificates for shares of Conversion Stock are to be issued upon such conversion shall be deemed to have become the holder or holders of record of the shares of Conversion Stock represented thereby.

(iii) As soon as possible after a conversion has been effected (but in any event within five (5) business days after such conversion), the Corporation shall deliver to the converting holder, upon surrender to the Corporation at its principal office by the converting holder of its certificate for the converted Class A Preferred, a certificate or certificates representing the number of shares of Conversion Stock issuable by reason of such conversion in the name or names and in such denominations as such converting holder has specified.

(iv) The issuance of certificates for shares of Conversion Stock upon conversion of Class A Preferred shall be made without charge to the holders of such Class A Preferred for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Conversion Stock. Upon conversion of each Share of Class A Preferred, the Corporation shall take all such actions as are necessary in order to insure that the Conversion Stock issuable with respect to such conversion shall be validly issued, fully paid and nonassessable and free and clear of all liens, charges and encumbrances.

(v) The Corporation shall not close its books against the transfer of Class A Preferred or of Conversion Stock issued or issuable upon conversion of Class A Preferred in any manner which interferes with the timely conversion of such Shares.

(vi) If any fractional interest in a share of Conversion Stock would, except for the provisions of this subparagraph 5B(vi), be deliverable upon any conversion of the Class A Preferred, the Corporation, in lieu of delivering the fractional share therefor, may elect to pay an amount to the holder thereof equal to the Offering Price of such fractional interest as of the date of conversion.

(vii) The Corporation shall take all such actions as may be necessary to assure that all such shares of Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Conversion Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance).

(viii) In connection with any conversion pursuant to this Section 5, the Corporation shall take all actions necessary to make available out of its authorized but unissued shares of Conversion Stock, solely for the purpose of issuance upon the conversion of the Class A

Preferred, such number of shares of Conversion Stock issuable upon the conversion of all outstanding Class A Preferred.

Section 6. Voting Rights. Except as otherwise provided by applicable law, the Class A Preferred shall have no voting rights. Notwithstanding the foregoing, each holder of Class A Preferred shall be entitled to notice of all shareholders meetings at the same time and in the same manner as notice is given to all shareholders entitled to vote at such meetings. The holders of the Common Stock shall be entitled to notice of all shareholders meetings in accordance with the Corporation's bylaws, and the holders of the Common Stock shall be entitled to one vote per share on all matters submitted to the shareholders of the Corporation for a vote.

Section 7. Events of Noncompliance.

7A. Definition. An Event of Noncompliance shall have occurred if:

(i) the Corporation fails to make any redemption payment with respect to the Class A Preferred which it is required to make hereunder (after giving effect to the second sentence of paragraph 4C hereof);

(ii) the Corporation or any material Subsidiary makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due; or an order, judgment or decree is entered adjudicating the Corporation or any material Subsidiary bankrupt or insolvent; or any order for relief with respect to the Corporation or any material Subsidiary is entered under the Federal Bankruptcy Code; or the Corporation or any material Subsidiary petitions or applies to any tribunal for the appointment of a custodian, trustee, receiver or liquidator of the Corporation or any material Subsidiary or of any substantial part of the assets of the Corporation or any material Subsidiary, or commences any proceeding (other than a proceeding for the voluntary liquidation and dissolution of a material Subsidiary) relating to the Corporation or any Subsidiary under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction; or any such petition or application is filed, or any such proceeding is commenced, against the Corporation or any material Subsidiary and either (a) the Corporation or any such material Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein or (b) such petition, application or proceeding is not dismissed within 60 days; or

(iii) the Corporation or any Subsidiary defaults in the performance of any obligation or agreement or there shall otherwise occur an event of default under any agreement to which the Corporation or any Subsidiary is a party if the effect of such default or event of default is to cause an amount exceeding $500,000 to become due prior to its stated maturity.

7B. Consequences of Events of Noncompliance.

(i) If an Event of Noncompliance has occurred (other than an Event of Noncompliance of the type described in subparagraph 7A(ii)), the holder or holders of a majority of the Class A Preferred then outstanding may demand (by written notice delivered to the

Corporation) immediate redemption of all or any portion of the Class A Preferred owned by such holder or holders at a price per Share equal to the Unreturned Original Cost plus Unpaid Yield with respect to such Share. The Corporation shall give prompt written notice of such election to the other holders of Class A Preferred (but in any event within five days after receipt of the initial demand for redemption from the holder or holders of a majority of the Class A Preferred then outstanding), and each such other holder may demand immediate redemption of all or any portion of such holder's Class A Preferred by giving written notice thereof to the Corporation within seven days after receipt of the Corporation's notice. The Corporation shall redeem all Class A Preferred as to which rights under this paragraph 7B have been exercised within 30 days after receipt of the initial demand for redemption from the holder or holders of a majority of the Class A Preferred then outstanding.

(ii) If an Event of Noncompliance of the type described in subparagraph 7A(ii) has occurred, all of the Class A Preferred then outstanding shall be subject to immediate redemption by the Corporation (without any action on the part of the holders of the Class A Preferred) at a price per Share equal to the amount which the holders of Class A Preferred are entitled to be paid with respect to each Share pursuant to Section 3 above. The Corporation shall immediately redeem all Class A Preferred upon the occurrence of such Event of Noncompliance.

(iii) If any Event of Noncompliance exists, each holder of Class A Preferred shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights which such holder may have pursuant to applicable law.

Section 8. Stock Splits and Stock Dividends. The Corporation shall not in any manner subdivide (by stock split, stock dividend or otherwise) or combine (by stock split, stock dividend or otherwise) the outstanding shares of Class A Preferred or Common Stock, as the case may be, unless the outstanding shares of the other class shall be proportionately subdivided or combined. All such subdivisions and combinations shall be payable only in Class A Preferred to the holders of Class A Preferred and in Common Stock to the holders of Common Stock. In no event shall a stock split or stock dividend constitute a payment of Yield or a return of Original Cost.

Section 9. Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Class A Preferred. Upon the surrender of any certificate representing Class A Preferred at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Class A Preferred represented by such new certificate from the date to which dividends have been fully paid on such Class A Preferred represented by the surrendered certificate.

Section 10. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Shares of Class A Preferred, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the

Corporation or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Class A Preferred represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 11. Definitions.

"Common Stock" means the Corporation's Common Stock and any other capital stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

"Conversion Stock" means shares of the Common Stock; provided that if there is a change such that the securities issuable upon conversion of the Class A Preferred are issued by an entity other than the Corporation or there is a change in the class of securities so issuable, then the term "Conversion Stock" shall mean shares of the security issuable upon conversion of the Class A Preferred if such security is issuable in shares, or shall mean the units in which such security is issuable if such security is not issuable in shares.

"Distribution" means each distribution made by the Corporation to holders of Class A Preferred or Common Stock, whether in cash, property, or securities of the Corporation and whether by dividend, liquidating distributions or otherwise; provided that none of the following shall be a Distribution: (a) any redemption or repurchase by the Corporation of any Class A Preferred pursuant to Section 4 above, (b) any conversion of any Class A Preferred pursuant to Section 5 above, (c) any redemption or repurchase of Class A Preferred or Common Stock pursuant to any right of first refusal, first offer or similar right in favor of the Corporation approved by the Corporation's Board of Directors so long as no Event of Noncompliance is in existence immediately prior to or is otherwise caused by any such repurchase, (d) repurchases of Common Stock from present or former employees or consultants of the Corporation and its Subsidiaries upon termination of employment or consultancy in accordance with arrangements approved by the Corporation's board of directors and so long as no Event of Noncompliance is in existence immediately prior to or is otherwise caused by any such repurchase or (e) any recapitalization or exchange of any Class A Preferred or Common Stock in compliance with the provisions of Section 8 above or any subdivision (by stock split, stock dividend or otherwise) or any combination (by stock split, stock dividend or otherwise) of any outstanding Class A Preferred or Common Stock in compliance with the provisions of Section 8 above.

"Junior Securities" means any capital stock or other equity securities of the Corporation, except for the Class A Preferred.

"Original Cost" of each share of Class A Preferred shall be equal to $360.00 per share (as proportionally adjusted for all stock splits, stock dividends and other recapitalizations affecting the Class A Preferred).

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof.

"Public Offering" means any offering by the Corporation of its equity or debt securities or any rights to acquire any of its equity or debt securities to the public pursuant to an effective registration statement under the Securities Act of 1933, as then in effect, or any comparable statement under any similar federal statute then in force.

"Redemption Date" as to any Share means the date specified in the notice of any redemption at the Corporation's option or the applicable date specified herein with respect to any other redemption; provided that no such date shall be a Redemption Date unless the Unreturned Original Cost plus Unpaid Yield with respect to such Share is actually paid in full on such date, and if not so paid in full, the Redemption Date shall be the date on which such amount is fully paid.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or control the managing general partner of such limited liability company, partnership, association or other business entity.

"Wholly-Owned Subsidiary" means, with respect to any Person, a Subsidiary of which all of the issued and outstanding capital stock or other ownership interests are owned by such Person or another Wholly-Owned Subsidiary of such Person.

"Unpaid Yield" of any Share of Class A Preferred means an amount equal to the excess, if any, of (a) the aggregate Yield accrued on such Share, over (b) the aggregate amount of Distributions made by the Corporation that constitute payment of Yield on such Share.

"Unreturned Original Cost" of any Share of Class A Preferred means an amount equal to the excess, if any, of (a) the Original Cost of such Share, over (b) the aggregate amount of Distributions made by the Corporation that constitute a return of Original Cost of such Share.

"Yield" means, with respect to each Share of Class A Preferred for each calendar quarter, the amount accruing on such Share each day during such quarter at the rate of 10% per annum of the sum of (a) such share's Unreturned Original Cost, plus (b) Unpaid Yield thereon for all prior quarters. In calculating the amount of any Distribution to be made during a calendar quarter, the portion of a Class A Preferred share's Yield for such portion of such quarter elapsing before such Distribution is made shall be taken into account.

Section 12. Amendment and Waiver. No amendment, modification or waiver shall be binding or effective with respect to any provision of Sections 1 to 11 of this Subdivision B without the prior written consent of the holders of 85% of the Class A Preferred outstanding at the time such action is taken; provided that no change in the terms hereof may be accomplished by merger or consolidation of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders of 85% of the Class A Preferred then outstanding.

Section 13. Notices. All notices, demands or other communications to be given or delivered hereunder shall be in writing and shall be deemed to have been given when delivered personally to the recipient or one (1) business day after being sent to the recipient by reputable overnight courier service (charges prepaid) or five (5) business days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. Such notices, demands and other communications shall be sent (i) to the Corporation, at its principal executive offices and (ii) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder).

## ARTICLE IV

Section 1. Elimination of Director Liability. The liability of directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

Section 2. Indemnification. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code) through Bylaw provisions, agreements with agents, vote of shareholders or disinterested directors, or otherwise, to the fullest extent permissible under California law.

Section 3. Effect of Amendment. Any amendment, repeal or modification of any provision of this Article IV shall not adversely affect any right or protection of an agent of this Corporation existing at the time of such amendment, repeal or modification.

# CERTIFICATE OF APPROVAL OF AGREEMENT OF MERGER

John K. La Rue and Roger L. Westphal state and certify that:

1. They are the President and Secretary, respectively, of Pac-West Telecomm, Inc., a California corporation.

2. The Agreement of Merger in the form attached was duly approved by the Board of Directors and shareholders of the corporation.

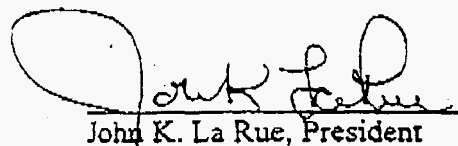
3. There is only one class of shares and the total number of outstanding shares is 10,000.

4. The shareholder approval was by the holders of one hundred percent (100%) of the outstanding shares of the corporation.

5. The shareholders have approved the Amended and Restated Articles attached as Exhibit A to the Agreement of Merger.

On the date set forth below, in the City of San Francisco in the State of California, each of the undersigned does hereby declare under the penalty of perjury under the laws of the State of California that he signed the foregoing certificate in the official capacity set forth beneath his signature, and that the statements set forth in said certificate are true of his own knowledge.

Signed on September 16, 1998.



John K. La Rue, President

Roger L. Westphal, Secretary

# EXHIBIT 2

## Certificate of Authority to Transact Business

Department of State

I certify the attached is a true and correct copy of the application by PAC-WEST TELECOMM, INC., a California corporation, authorized to transact business within the State of Florida on August 10, 2005 as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H05000191784. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is F05000004643.

Authentication Code: 405A00051478-081105-F05000004643-1/1

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Eleventh day of August, 2005

Glenda E. Hood
Secretary of State

**CORPORATION SERVICE COMPANY**
www.incspot.com

CSC- Wilmington
Suite 400
2711 Centerville Road
Wilmington, DE 19808
800-927-9800
302-636-5454 (Fax)

**Matter#** Not Provided
**Project Id :**
**Additional Reference :**

**Order#** 518719-25
**Order Date** 08/02/2005

**Entity Name :** PAC-WEST TELECOMM, INC.

**Jurisdiction :** FL-Secretary of State

**Request for :** Qualification Filing
**File# :** F05000004643
**File date :** 08/10/2005

**Result :** Filed

Ordered by MS. NANCY GRIFFIN at PAC-WEST TELECOMM, INC.

Thank you for using CSC. For real-time 24 hour access to the status of any order placed with CSC, access our website at www.incspot.com.

If you have any questions concerning this order or IncSpot, please feel free to contact us.

Rickeda Jackson
rjackson@cscinfo.com

The responsibility for verification of the files and determination of the information therein lies with the filing officer; we accept no liability for errors or omissions.

# EXHIBIT 3

## Managerial and Technical Qualifications

# PAC-WEST TELECOMM, INC.
## MANAGEMENT BIOGRAPHIES

**Hank Carabelli**
**President and Chief Executive Officer**
Mr. Carabelli joined Pac-West as President and COO in June of 2001. He joined the company's Board of Directors in January of 2003. In July of 2003, he was appointed Chief Executive Officer with overall responsibility for the operations of the company. Formerly the COO of ICG, a Colorado-based CLEC, and President of @Link Networks, a broadband service provider, Mr. Carabelli brings over 28 years of telecom experience to Pac-West. He joined ICG in 1996 as Executive Vice President of network operations, and served as COO from 1998 to 1999 with responsibility over network engineering, customer care, sales, and installation. Prior to ICG, Mr. Carabelli spent 19 years in management with Ameritech and Michigan Bell. Mr. Carabelli serves on the Board of Directors for the San Joaquin Business Council, and the University of San Francisco Telecommunications Advisory Board.

**H. Ravi Brar**
**Chief Financial Officer and Vice President Human Resources**
Mr. Brar joined Pac-West in July 1999 as Vice President of Business Development. He was appointed Vice President of Customer Operations in October of 2000, Vice President of Finance and Treasurer in August of 2001, Acting Chief Financial Officer in February of 2002, and Chief Financial Officer in September of 2002 and Vice President of Human Resources in 2004. Mr. Brar has responsibility for the Company's financial and accounting operations, evaluating strategic growth opportunities, and human resources. Prior to joining Pac-West, Mr. Brar was employed with Xerox Corporation from 1991 to 1999, where he held several senior level business development and financial management positions, including Business Development Manager of Developing Markets Operations in China and Russia, and Area General Manager and Controller of Xerox's Business Services division in Pittsburgh, PA.

**Todd M. Putnam**
**Chief Information Officer**
Mr. Putnam joined Pac-West in October of 2003 as Chief Information Officer. Mr. Putnam has responsibility over the Company's information systems including its Information Technology strategic plan and infrastructure, including operating support systems, software development, database administration, security, system integration, internal and external web sites, and supplier partnerships. Prior to joining Pac-West, he completed a consulting assignment with TechNexxus, LLC (a subsidiary of Mintz Levin Cohn Ferris Glovsky and Popeo PC) in Washington D.C. From 1989 to 2002, he was employed with Global Crossing LTD (Frontier Communications, ConferTech International, and T1 Systems), where he was responsible for building, operating, and maintaining the global information systems infrastructure for the entire company. He held a variety of senior level IT positions, including Vice President of Global IS Operations, Vice President of North American Systems and Infrastructure, Vice President of Systems Development, and CIO of the ConferTech division.

**Michael B. Hawn**
**Vice President Customer Network Services**
Mr. Hawn joined Pac-West as Vice President of Customer Network Services in August 2001. He has end-to-end responsibility over service delivery, maintenance, planning, engineering, billing operations and reliability. He has over 18 years of telecommunications management experience, including network planning, engineering, service delivery, provisioning, and software development. His former positions include Vice President of National Operations and Vice President of Program Management for @Link Networks, Inc. in Louisville, CO, Vice President of Planning and Engineering for ICG Communications, Inc. in Englewood, CO, and Technical Manager for Lucent Technologies' Regional Technical Assistance Center (RTAC) in Lisle, IL and Cockeysville, MD.

**Eric Jacobs**
**Vice President, General Manager**
**Service Provider Sales**
Mr. Jacobs joined Pac-West in March of 2003 and was promoted to Vice President, General Manager of Service Provider Markets in December 2003. He has over ten years of sales management experience in the communications industry. Prior to joining Pac-West, he held positions as Director of Sales for Metromedia Fiber Network and Manager of Corporate Accounts for Nextel Communications, Inc. Mr. Jacobs has leadership over the company's sales, channel marketing and customer relations teams.

**John F. Sumpter**
**Vice President Regulatory**
Mr. Sumpter joined Pac-West as Vice President of Regulatory in July of 1999. He is responsible for Pac-West's relations with government regulatory agencies, regulatory compliance, and intercarrier relations. Mr. Sumpter has over 30 years of experience in the telecommunications industry. Prior to Pac-West, he was employed with AT&T from 1984-1999, where he held several executive level regulatory and marketing positions, including Division Manager of Law and Government Affairs, District Manager of Switched Services Product Management, and District Manager of Marketing. He currently serves as Chairman of the Board of CALTEL, the California Association of Competitive Telecommunications Companies and of CACE, the California Alliance for Consumer Education.

**Peggy McGaw**
**Vice President of Finance**
Ms. McGaw joined Pac-West in June of 2002 as Executive Director of Accounting and Finance and was promoted to Vice President Finance in December of 2003. Ms. McGaw has responsibility over accounting, risk management, financial reporting and compliance, and tax and treasury activities. Prior to joining Pac-West she served as CFO of the Dial.com from 1999 to 2002. Prior positions included in her 20 years of finance experience are Vice President of Finance and Acting CFO of Intracel Corporation and a Business Assurance Manager for PricewaterhouseCoopers, LLP. Her extensive experience with technology-based companies includes numerous capital raising and M&A transactions. Ms. McGaw is a member of the American Institute of Certified Public Accountants, Financial Executives International and the Forum for Women Entrepreneurs.

**Robert C. Morrison**
**Vice President and General Counsel**
Mr. Morrison joined Pac-West as Vice President and General Counsel in January of 2003. He served on Pac-West's Board of Directors from 2001 through December 31, 2002. He has served as our Corporate Secretary since February 2001. Mr. Morrison has responsibility over corporate governance, record keeping, documentation and legal administration of contractual relationships, and managing the Company's relationships with outside law firms. Prior to joining Pac-West, Mr. Morrison was an attorney with Neumiller and Beardslee, P.C. in Stockton, California from 1972-2002. He served as Managing Director from 1983-1990. In July of 2002, he completed a term on the Board of Regents of the University of California. He is a past president of the Greater Stockton Chamber of Commerce, the San Joaquin County Economic Development Association, and the alumni association for UC Davis, and is a former member of the Board of Directors and Executive Committee of the Lassen Volcanic National Park Foundation.

**EXHIBIT 4**

**Financial Qualifications**

Pac-West possesses the financial qualifications required of applicants seeking CLEC certification in the State of Florida. Pac-West has access to the financing and capital necessary to conduct its telecommunications operations as specified in this Application. Pac-West seeks authority to provide facilities-based and local exchange and interexchange telecommunications services to customers from all points within the state of Florida. Attached hereto is Pac-West's most recent 10-K financial statement. This statement establishes that Pac-West has sufficient financial capability to provide resold competitive local exchange services and to maintain the provision of such services to the Florida public. The statements are offered solely to demonstrate Applicant's financial capability to operate as a telecommunications service provider in the State of Florida.

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## Report of Independent Registered Public Accounting Firm

Board of Directors and Stockholders

Pac–West Telecomm, Inc.
Stockton, California

We have audited the accompanying consolidated balance sheet of Pac–West Telecomm, Inc. and subsidiaries as of December 31, 2004 and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows for the year then ended. We have also audited the 2004 Schedule II — Valuation and Qualifying Accounts (the Schedule). The financial statements and the Schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and the Schedule based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements and Schedule are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements and the Schedule. assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statement and the Schedule. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Pac–West Telecomm, Inc. and subsidiaries at December 31, 2004 and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Also in our opinion, the Schedule presents fairly, in all material respects, the information set forth therein.

/s/ BDO SEIDMAN, LLP

San Francisco, California

February 25, 2005, except for Note 18, which is dated as of March 11, 2005

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## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders

Pac–West Telecomm, Inc.

We have audited the accompanying consolidated balance sheet of Pac–West Telecomm, Inc. and subsidiaries as of December 31, 2003 and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity and cash flows for each of the years in the two–year period ended December 31, 2003. In connection with our audits of the consolidated financial statements, we have also audited the accompanying financial statement schedule for each of the years in the two–year period ended December 31, 2003. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit als o includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Pac–West Telecomm, Inc. and subsidiaries as of December 31, 2003, and the results of their operations and their cash flows for each of the years in the two–year period ended December 31, 2003, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related 2003 and 2002 information in the financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ KPMG LLP

Mountain View, California

February 13, 2004

# PAC–WEST TELECOMM, INC.

## CONSOLIDATED BALANCE SHEETS

### As of December 31, 2004 and 2003
### (In thousands except share and per share data)

| | 2004 | 2003 |
|---|---|---|
| **ASSETS** | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | $ 32,265 | $ 34,657 |
| Short–term investments | 10,501 | — |
| Trade accounts receivable, net of allowances of $366 and $1,560 as of December 31, 2004 and 2003, respectively | 12,774 | 7,713 |
| Prepaid expenses and other current assets | 5,316 | 4,576 |
| Deferred tax assets | — | 3,467 |
| Total current assets | 60,856 | 50,413 |
| PROPERTY AND EQUIPMENT, net | 43,413 | 121,211 |
| GOODWILL | 119 | — |
| OTHER ASSETS, net | 2,664 | 2,578 |
| Total assets | $ 107,052 | $ 174,202 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| CURRENT LIABILITIES: | | |
| Accounts payable | $ 5,684 | $ 6,098 |
| Current obligations under notes payable and capital leases | 2,889 | 2,606 |
| Accrued interest | 2,208 | 2,096 |
| Other accrued liabilities | 12,445 | 11,696 |
| Deferred revenues | 846 | 594 |
| Total current liabilities | 24,072 | 23,090 |
| SENIOR NOTES | 36,102 | 36,102 |
| NOTES PAYABLE, less current portion | 28,285 | 18,421 |
| CAPITAL LEASES, less current portion | 651 | 191 |
| DEFERRED REVENUES, less current portion | 353 | 467 |
| DEFERRED TAX LIABILITIES | — | 3,467 |
| Total liabilities | 89,463 | 81,738 |
| COMMITMENTS AND CONTINGENCIES (Note 9) | | |
| STOCKHOLDERS' EQUITY: | | |
| Common stock, $0.001 par value: | | |
| Authorized shares — 100,000,000 | | |
| Issued and outstanding shares — 36,792,426 and 36,590,532 at December 31, 2004 and 2003, respectively | 37 | 37 |
| Additional paid–in capital | 204,540 | 204,461 |
| Deferred stock compensation | (565) | (758) |
| Accumulated deficit | (186,309) | (111,276) |
| Accumulated other comprehensive loss | (114) | — |
| Total stockholders' equity | 17,589 | 92,464 |
| Total liabilities and stockholders' equity | $ 107,052 | $ 174,202 |

See notes to the consolidated financial statements.

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# PAC–WEST TELECOMM, INC.

## CONSOLIDATED STATEMENTS OF OPERATIONS

## AND COMPREHENSIVE INCOME (LOSS)
**For the Years Ended December 31, 2004, 2003 and 2002**
**(In thousands except per share data)**

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2004 | 2003 | 2002 |
| REVENUES | $ 124,006 | $ 134,640 | $ 164,098 |
| COSTS AND EXPENSES: | | | |
| Network expenses | 39,834 | 36,286 | 53,525 |
| Selling, general and administrative | 58,065 | 59,217 | 60,114 |
| Depreciation and amortization | 32,565 | 44,000 | 40,350 |
| Restructuring charges | 516 | 125 | 8,620 |
| Impairment of assets | 54,898 | — | 16,621 |
| Total operating expenses | 185,878 | 139,628 | 179,230 |
| Loss from operations | (61,872) | (4,988) | (15,132) |
| OTHER (INCOME) EXPENSE: | | | |
| Interest expense | 12,515 | 13,520 | 17,398 |
| Interest income | (409) | (477) | (1,605) |
| Loss (gain) on extinguishment of debt | — | 3,689 | (33,847) |
| Loss on asset dispositions, net | 1,055 | 30 | 131 |
| Total other (income) expense, net | 13,161 | 16,762 | (17,923) |
| (LOSS) INCOME BEFORE INCOME TAXES | (75,033) | (21,750) | 2,791 |
| (BENEFIT FROM) PROVISION FOR INCOME TAXES | — | (6,500) | 745 |
| Net (loss) income | $ (75,033) | $ (15,250) | $ 2,046 |
| NET (LOSS) INCOME PER SHARE: | | | |
| Basic | $ (2.05) | $ (0.42) | $ 0.06 |
| Diluted | $ (2.05) | $ (0.42) | $ 0.06 |
| WEIGHTED AVERAGE SHARES OUTSTANDING: | | | |
| Basic | 36,655 | 36,481 | 36,308 |
| Diluted | 36,655 | 36,481 | 36,334 |
| COMPREHENSIVE (LOSS) INCOME: | | | |
| Net (loss) income | $ (75,033) | $ (15,250) | $ 2,046 |
| Unrealized (loss) on investments | (114) | — | (103) |
| Reclassification of realized gain on sale of investments | — | 156 | — |
| Comprehensive (loss) income | $ (75,147) | $ (15,094) | $ 1,943 |

See notes to the consolidated financial statements.

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## PAC–WEST TELECOMM, INC.

## CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

### For the Years Ended December 31, 2004, 2003 and 2002
(In thousands)

| | Common Stock | | Additional Paid–In Capital | Note Receivable from Shareholders | Accumulated (Deficit) | Accumulated Other Comprehensive Income/ (Loss) |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| Balance, December 31, 2001 | 36,148 | $ 36 | $ 183,550 | $ (200) | $ (98,072) | $ (53) |
| Exercise of stock options | 223 | — | 17 | — | — | — |
| Issuance of shares under Employee Stock Purchase Plan | 73 | — | 101 | — | — | — |
| Unrealized loss on investments | — | — | — | — | — | (103) |
| Amortization of deferred stock compensation | — | — | — | — | — | — |
| Net income | — | — | — | — | 2,046 | — |
| Balance, December 31, 2002 | 36,444 | 36 | 183,668 | (200) | (96,026) | (156) |
| Exercise of stock options | 69 | 1 | 68 | — | — | — |
| Note receivable from stockholder | — | — | — | 200 | — | — |
| Warrants issued with Senior Secured Note | — | — | 20,004 | — | — | — |
| Issuance of shares under Employee Stock Purchase Plan | 78 | — | 38 | — | — | — |
| Reclassification of realized gain on sale of investments | — | — | — | — | — | 156 |
| Deferred stock compensation | — | — | 683 | — | — | — |
| Amortization of deferred stock compensation | — | — | — | — | — | — |
| Net loss | — | — | — | — | (15,250) | — |
| Balance, December 31, 2003 | 36,591 | 37 | 204,461 | — | (111,276) | — |
| Exercise of stock options | 86 | — | 40 | — | — | — |
| Issuance of shares under Employee Stock Purchase Plan | 115 | — | 110 | — | — | — |
| Unrealized loss on investments | — | — | — | — | — | (114) |
| Amortization of deferred stock compensation and other | — | — | 8 | — | — | — |
| Deferred financing fees | — | — | (79) | — | — | — |
| Net loss | — | — | — | — | (75,033) | — |
| Balance, December 31, 2004 | 36,792 | $ 37 | $ 204,540 | $ — | $ (186,309) | $ (114) |

[Additional columns below]

[Continued from above table, first column(s) repeated]

| | Deferred Stock Compensation | Total Shareholders' Equity |
|---|---|---|
| Balance, December 31, 2001 | $ (190) | $ 85,071 |
| Exercise of stock options | — | 17 |
| Issuance of shares under Employee Stock Purchase Plan | — | 101 |
| Unrealized loss on investments | — | (103) |
| Amortization of deferred stock compensation | 104 | 104 |
| Net income | — | 2,046 |
| Balance, December 31, 2002 | (86) | 87,236 |
| Exercise of stock options | — | 69 |
| Note receivable from stockholder | — | 200 |
| Warrants issued with Senior Secured Note | — | 20,004 |
| Issuance of shares under Employee Stock Purchase Plan | — | 38 |
| Reclassification of realized gain on sale of investments | — | 156 |
| Deferred stock compensation | (683) | — |
| Amortization of deferred stock compensation | 11 | 11 |
| Net loss | — | (15,250) |
| Balance, December 31, 2003 | (758) | 92,464 |

| | | |
|---|---|---|
| Exercise of stock options | — | 40 |
| Issuance of shares under Employee Stock Purchase Plan | — | 110 |
| Unrealized loss on investments | — | (114) |
| Amortization of deferred stock compensation and other | 193 | 201 |
| Deferred financing fees | — | (79) |
| Net loss | — | (75,033) |
| Balance, December 31, 2004 | $ (565) | $ 17,589 |

See notes to the consolidated financial statements.

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# PAC–WEST TELECOMM, INC.

## CONSOLIDATED STATEMENTS OF CASH FLOWS

### For the Years Ended December 31, 2004, 2003 and 2002
### (In thousands)

| | Years Ended December 31, | | |
|---|---|---|---|
| | 2004 | 2003 | 2002 |
| OPERATING ACTIVITIES: | | | |
| Net (loss) income | $(75,033) | $(15,250) | $ 2,046 |
| Adjustments to reconcile net (loss) income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 32,565 | 44,000 | 40,350 |
| Amortization of deferred financing costs | 703 | 434 | 693 |
| Amortization of discount on note payable | 5,498 | 156 | — |
| Amortization of deferred stock compensation and other | 200 | 11 | 104 |
| Impairment of assets | 54,898 | — | 16,621 |
| Non–cash restructuring charges | — | — | 3,408 |
| Net loss (gain) on extinguishment of debt | — | 3,689 | (33,847) |
| Net loss on asset dispositions | 1,055 | 30 | 131 |
| Provision for doubtful accounts | (183) | 192 | 1,008 |
| Deferred income tax (benefit) provision | — | (5,246) | 668 |
| Other | — | — | 1,148 |
| Changes in operating assets and liabilities, net of acquisitions: | | | |
| (Increase) decrease in trade accounts receivable | (4,772) | 4,719 | 69 |
| Decrease in income tax receivable | — | — | 7,386 |
| (Increase) decrease in prepaid expenses and other current assets | (146) | 1,106 | (750) |
| Decrease in other assets | 265 | 31 | 1,388 |
| (Decrease) in accounts payable | (414) | (4,204) | (1,478) |
| Increase (decrease) in accrued interest | 744 | (3,426) | (1,624) |
| (Decrease) increase in other accrued liabilities | (2,604) | (7,828) | 7,321 |
| Net cash provided by operating activities | 12,776 | 18,414 | 44,642 |
| INVESTING ACTIVITIES: | | | |
| Purchases of property and equipment | (7,132) | (4,980) | (19,564) |
| (Purchases) redemptions of short–term investments, net | (10,615) | 29,365 | (10,841) |
| Proceeds from disposal of equipment | 148 | 75 | 200 |
| Costs of acquisitions, net of cash received | (587) | — | — |
| Deposits associated with the enterprise customer base sale | 3,500 | — | — |
| Net cash (used in) provided by investing activities | (14,686) | 24,460 | (30,205) |
| FINANCING ACTIVITIES: | | | |
| Payment on senior credit facility | — | — | (10,000) |
| Proceeds from repayment of note receivable from stockholder | — | 200 | — |
| Proceeds from borrowing under note payable | 3,322 | 40,049 | 35 |
| Repayments on Fiber IRU | — | (4,200) | (13,040) |
| Repayments on notes payable | (1,048) | (59,015) | (20,657) |
| Principal payments on capital leases | (2,668) | (8,177) | (6,752) |
| Payments for deferred financing costs | (237) | (5,205) | (120) |
| Proceeds from the issuance of common stock | 149 | 81 | 118 |
| Net cash (used in) financing activities | (482) | (36,267) | (50,416) |
| Net (decrease) increase in cash and cash equivalents | (2,392) | 6,607 | (35,979) |
| CASH AND CASH EQUIVALENTS: | | | |
| Beginning of year | 34,657 | 28,050 | 64,029 |
| End of year | $ 32,265 | $ 34,657 | $ 28,050 |
| SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION: | | | |
| Cash paid during the year for: | | | |
| Interest | $ 5,584 | $ 16,413 | $ 19,883 |
| Income taxes | $ — | $ 161 | $ 7 |
| Non–cash Operating and Financing Activities: | | | |
| Prepaid maintenance agreement financed by notes payable | $ 1,624 | $ — | $ — |
| Capitalized interest on Senior Secured Note | $ 634 | $ — | $ — |
| Non–cash Investing and Financing Activities: | | | |
| Equipment acquisitions financed by notes payable | $ 2,075 | $ — | $ — |
| Equipment acquisitions on capital lease obligation | $ 1,376 | $ 765 | $ — |

See notes to the consolidated financial statements.

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PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2004

## 1. Summary of Significant Accounting Policies

*Description of Business*

Pac–West Telecomm, Inc. (the Company) has evolved into a high–value, independent provider of integrated communications solutions that enable communication providers to use our network and services as an alternative to building and maintaining their own network. The Company's customers include Internet service providers, enhanced communications service providers (ESPs) and other direct providers of communication services to business or residential end–users, collectively referred to as service providers, or SPs. In response to our changing business model, on March 11, 2005, we sold the majority of our enterprise customer base to U.S. TelePacific Corp. (TelePacific) while retaining our associated network assets. Under the terms of this transaction, TelePacific acquired certain assets and assumed certain liabilities associated with our Enterprise customers in exchange for $26.9 million in cash (see Note 18).

*Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of the Company and its subsidiaries since the date of acquisition. All intercompany accounts and transactions have been eliminated.

*Critical Accounting Policies*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions. These assumptions effect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and reported amounts of revenues and expenses:

Management considers the following accounting policies to be critical due to the estimation process involved in their calculation:

- revenue recognition;
- provision for doubtful accounts receivable;
- estimated settlements of disputed billings; and
- impairment of long–lived assets.

By their nature, these judgments are subject to uncertainty. Thus, actual results could differ from estimates made and such differences could be material.

*Revenue Recognition.* The Company recognizes revenue when:

- there is persuasive evidence of an arrangement;
- delivery of the product or performance of the service has occurred;
- the selling price is fixed and determinable; and
- collectibility is reasonably assured.

The Company recognizes revenues from service access agreements as the service is provided, except for intercarrier compensation fees paid by our intercarrier customers for completion of their customers' calls through our network, and access charges paid by carriers for long distance traffic terminated on our network. The rights of competitive local exchange carriers (CLECs), to receive this type of compensation is the subject of numerous regulatory and legal challenges. Until this issue is ultimately resolved, the Company will continue

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

to recognize intercarrier compensation as revenue when the price becomes fixed and determinable and collectibility is reasonably assured.

Some Incumbent Local Exchange Carriers (ILECs) with which the Company has interconnection agreements had withheld payments from amounts billed by the Company under their agreements. The process of collection of intercarrier compensation can be complex and subject to interpretation of regulations and laws. This can lead to the requirement for negotiated settlements between the Company and the ILEC where it agrees to accept a portion of what it believes is owed to it. These settlements generally reflect the mutual agreements of both parties that exist at the date of the settlement. Settlements were entered into with ILECs whereby the ILECs paid the Company an aggregate of $10.7 million in 2004, $5.7 million in 2003 and $20.6 million in 2002. The settlements were included in revenues.

Non–refundable up–front payments received for installation services, and related costs up to the amount of revenues, are recognized as revenue and expense ratably over the term of the service contracts, generally 36 months. Any costs in excess of recognized revenues are expensed in the period incurred. As of December 31, 2004, $1,199,000 of installation payments received were deferred and are included in deferred revenues and $623,000 of associated costs were deferred and are included in other assets, in the accompanying consolidated balance sheets.

*Provision for doubtful accounts receivable.* The Company estimates the provision for doubtful accounts receivable based upon the following factors:

- historical collection experience;
- customer delinquencies and bankruptcies;
- information provided by the Company's customers;
- observance of trends in the industry; and
- other current economic conditions.

Past due balances over 30 days and over a specified amount are reviewed individually for collectibility. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is remote. Collection is due and payable either upon receipt or up to 30 days from the date of invoice.

*Estimated settlements for disputed billings.* During the ordinary course of business, the Company may be billed at incorrect rates or for carrier traffic that management believes the Company is not responsible for. Accordingly, the Company will dispute the billing with the vendor and withhold payment until the matter is resolved. The Company's current disputes are primarily related to incorrect facility rates or incorrect billing elements the Company believes it is being charged. Management regularly reviews and monitors all disputed items and records an accrual that represents what it believes it may pay to settle the dispute. Although the Company continues to actively try and expedite resolutions, often times the state Public Utilities Commission becomes involved in the arbitration of these agreements. This process is often lengthy and resolutions are often subject to appeal. As of December 31, 2004, the Company accrued approximately $1.3 million, representing managements best estimate of expected settlements of disputes currently in negotiation. If resolutions to items in negotiation are favorable or unfavorable to management's estimations, the Company's reserve for disputed items may be subject to change.

*Long–lived assets.* In 2002, the Company adopted Statement of Financial Accounting Standards (SFAS) No. 144, "Accounting for the Impairment or Disposal of Long–Lived Assets." The Company evaluates its long–lived assets if events or changes in circumstances indicate that the carrying amount of these assets may not be fully recoverable. Recoverability of assets to be held and used is measured by comparing the carrying amount of an asset to the potential undiscounted cash flows expected to be generated by the asset. If

an asset is considered to be impaired, it is written down to its fair market value. This is assessed based on factors specific to the type of asset. In assessing the recoverability of these assets, the Company must make assumptions regarding, among other things, estimated future cash flows to determine the fair market value of the respective assets. If these estimates and the related assumptions change, the Company may be required to record additional impairment charges for these assets in the future. During the fourth quarter of 2004 and the second quarter of 2002, the Company recorded impairment charges of $54.9 million and $16.6 million, respectively.

*Other Significant Accounting Policies*

*Reclassification.* Certain prior year amounts have been reclassified to conform with the current year presentation.

*Fair Value of Financial Instruments.* The carrying value of the Company's cash and cash equivalents, marketable debt and equity securities, accounts receivable and accounts payable approximate their respective fair values due to the short–term nature of these instruments. The fair value of the Senior Secured Note approximates the value on March 11, 2005 when the Company repaid this note. The fair value of the Company's Senior Notes was based on a quotation from an investment bank as of December 31, 2004 and approximates their carrying value. The fair value of the Company's other notes payable are based on the borrowing rates currently available to the Company for bank loans with similar terms and average maturities and approximate their carrying value.

*Cash Equivalents.* The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

*Short Term Investments.* All investments with a maturity of greater than three months at the date of purchase are accounted for under SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities." Although the Company's investment portfolio only contains investments that are highly liquid and can be converted to cash at any time, the Company determines the appropriate classification of the investment as a cash equivalent or an available–for–sale short–term investment based on the anticipated maturity date at the time of purchase. The Company's investments are not subject to penalties for early terminations or sales. All investments as of December 31, 2004 and 2003 were classified as available–for–sale and carried at fair value. Gross realized gains and losses were insignificant and included in interest income in the accompanying consolidated statements of operations. Differences between cost and fair value (unrealized gains and losses) are recorded as other comprehensive income (loss), a separate component of stockholders' equity.

*Property and Equipment.* Property and equipment is stated at cost and includes network and other communication equipment, equipment under capital leases, office furniture, business software and computer equipment, vehicles, leasehold improvements, and projects in progress. Expenditures for repairs and maintenance, which do not extend the useful life of the property and equipment and purchases below $1,000, are charged to expense as incurred. Upon retirement, the asset cost and related accumulated depreciation are relieved from the consolidated financial statements. Gains and losses associated with dispositions and impairment of property and equipment are reflected as (income) loss on asset dispositions, net and impairment of assets, respectively, in the accompanying consolidated statements of operations. Depreciation and amortization is computed using the straight–line method. Estimated useful lives range from 3 to 20 years.

*Network expenses.* Network expenses are comprised mainly of leased transport charges, usage charges for long distance and intrastate calls and, to a lesser extent, intercarrier compensation the Company pays to other companies related to calls that originate with a Pac–West customer and terminate on the network of an ILEC or other CLEC. The Company's leased transport charges include the lease payments it incurs for the transmission facilities, or circuits, used to connect its customers to its switches and to connect to ILEC and CLEC networks. Depreciation expense associated with the Company's switching equipment is included in

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

depreciation and amortization in the consolidated statements of operations. The Company does not include any significant employee costs in network expenses.

*Stock Based Compensation.* The Company follows Accounting Principles Board Opinion No. 25, "Accounting for Stock Issues to Employees" for its stock based compensation plans. The Company has adopted the disclosure–only provisions of SFAS No. 123, "Accounting for Stock–Based Compensation," to disclose pro forma information regarding options granted to its employees based on specified valuation techniques that produce estimated compensation charges. The Company uses the Black–Scholes option–pricing model to drive theoretical fair value of employee stock option grants. These amounts have not been reflected in the Company's consolidated statements of operations because no compensation arises when the price of the employees' stock options equals the market value of the underlying stock at the date of grant, as in the Company's case. If compensation expense for the Company's stock–based compensation plans had been determined in accordance with the fair value as prescribed in SFAS 123, the Company's net (loss) income per share for the years ended December 31, 2004, 2003, and 2002 would have been as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| | (Dollars in thousands except per share amounts) | | |
| Net (loss) income as reported | $(75,033) | $(15,250) | $ 2,046 |
| Total stock–based employee compensation included in reported net loss/income, net of tax | 200 | 8 | 76 |
| Total stock–based employee compensation determined under the fair value based method | (1,366) | (1,299) | (1,702) |
| Pro forma | $(76,199) | $(16,541) | $ 420 |
| Basic net (loss) income per common share: | | | |
| As reported | $ (2.05) | $ (0.42) | $ 0.06 |
| Pro forma | $ (2.08) | $ (0.45) | $ 0.01 |
| Diluted net (loss) income per common share: | | | |
| As reported | $ (2.05) | $ (0.42) | $ 0.06 |
| Pro forma | $ (2.08) | $ (0.45) | $ 0.01 |

*Income Taxes.* The Company provides for income taxes under the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to be applied to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of changes in tax rates is recognized in income in the period that includes the enactment dates. Valuation allowances are provided against deferred tax assets when it is more likely than not that some portion or all of the deferred tax asset will not be realized.

*Accruals related to restructuring activities.* In June 2002 and August 2001, the Company approved and announced restructuring plans, which included, among other things, closing switch facilities in Colorado and Utah and consolidation of sales offices. In order to estimate rent expense related to these abandoned premises, the Company made certain assumptions including; (1) the time period over which the premises would remain vacant, (2) sublease terms, and (3) estimated sublease rents. In the case of the switching facilities, no sublease income was estimated due to the specialized nature these facilities. If the Company is able to sublet or negotiate an early termination penalty for its abandoned switch facility in Colorado, or is unable to sublet the sales offices within the estimated timeframe and at estimated terms, the restructuring charge could be subject to change.

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Recent Accounting Pronouncements*

In December 2004, the Financial Accounting Standards Board (FASB) issued SFAS No. 123R, "Share–Based Payment." Among other items, the standard requires the Company to recognize compensation cost for all share–based payments, in the Company's consolidated statements of operations. Depending on the model used to calculate stock–based compensation expense in the future and other requirements of SFAS No. 123R, the pro forma disclosure in Note 10 may not be indicative of the stock–based compensation expense that will be recognized in the Company's future financial statements. The new standard is effective for the first period that begins after June 15, 2005, and allows two different methods of transition. The Company is currently evaluating the new standard and models, which may be used to calculate future stock–based compensation expense.

In December 2004, the FASB issued SFAS No. 153, "Exchanges of Nonmonetary Assets." SFAS No. 153 amends APB Opinion 29, "Accounting for Nonmonetary Transactions," to eliminate the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. A nonmonetary exchange has commercial substance if the future cash flows of the entity are expected to change significantly as a result of the exchange. APB Opinion 29 is based on the principle that exchanges of nonmonetary assets should be measured based on fair value of the assets exchanged. SFAS No. 153 is effective for nonmonetary exchanges occurring in fiscal periods beginning after June 15, 2005. The Company does not expect the adoption of SFAS No. 153 will have a material impact on it financial position, results of operations and cash flows.

In October 2004, the FASB issued Emerging Issues Task Force Issue No. 04–8 (EITF 04–8), "The Effect of Contingently Convertible Instruments on Diluted Earnings per Share." EITF 04–8 addresses when contingently convertible instruments should be included in diluted earnings per share. Contingent convertible instruments are instruments that have embedded conversion features that are contingently convertible or exercisable based on (a) a market price trigger or (b) multiple contingencies if one of the contingencies is a market price trigger and the instrument can be converted or share settled based on meeting the specified market condition. The Task Force concluded that contingently convertible instruments should be included in diluted earnings per share (if dilutive) regardless of whether the market price trigger has been met. EITF 04–8 is effective for periods ending after December 15, 2004. The adoption of EITF 04–8 did not have an impact on the Company's diluted earnings per share.

In March 2004, the FASB issued EITF 03–1, "The Meaning of Other–Than–Temporary Impairment and Its Application to Certain Investments." EITF 03–1 includes new guidance for evaluating and recording impairment losses on debt and equity instruments, as well as new disclosure requirements for investments that are deemed to be temporarily impaired. The accounting guidance provided in EITF 03–1 is effective for fiscal years beginning after September 15, 2004, while the disclosure requirements are effective for annual periods ending after September 15, 2004. The Company does not expect the adoption of EITF 03–1 will have a material impact on its financial position, results of operations and cash flows.

In December 2003, the FASB issued FASB Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities," which addresses how a business enterprise should evaluate whether it has a controlling financial interest in an entity through means other than voting rights and accordingly should consolidate the entity. The adoption of FASB Interpretation No. 46 did not have an impact on the Company as at December 31, 2004, the Company does not believe it had any VIE's for which this interpretation would be applicable.

In December 2003, the SEC issued Staff Accounting Bulletin (SAB) No. 104, "Revenue Recognition," which codifies, revises and rescinds certain sections of SAB No. 101, Revenue Recognition, in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC

rules and regulations. The changes noted in SAB No. 104 did not have a material effect on the Company's financial position, results of operations and cash flows.

*Concentration of Customers and Suppliers*

During 2004 revenues from three customers accounted for 21.1%, 17.6% and 3.9% of revenues. During 2003 these same three customers accounted for 21.8%, 17.1% and 10.6% of revenues, respectively, and during 2002 accounted for 31.5%, 8.8% and 16.0%, respectively. During each of the years ended December 31, 2004, 2003 and 2002 no other customer accounted for more than 10.0% of total revenues. As of December 31, 2004 accounts receivable from one customer represented more than 10% of trade accounts receivable. In 2004, 2003 and 2002, the Company's largest source of operating costs was also one ILEC which represented 40.3%, 37.3% and 32.4% of the Company's network expenses during the years ended 2004, 2003 and 2002, respectively.

## 2. Investments

The following table summarizes the Company's investments in securities at December 31, 2004:

| | Cost | Unrealized Losses, net | Fair Market Value |
|---|---|---|---|
| | | (Dollars in thousands) | |
| U.S. government agencies | $ 7,457 | $ — | $ 7,457 |
| Commercial paper | 4,892 | — | 4,892 |
| Corporate bonds | 10,615 | (114) | 10,501 |
| Total investments in securities | | | 22,850 |
| Cash | | | 19,916 |
| Total cash and investments | | | $42,766 |
| Reported as: | | | |
| Cash and cash equivalents | | | $32,265 |
| Short–term investments | | | 10,501 |
| | | | $42,766 |

As of December 31, 2004, all of the contractual maturities of the Company's U.S. government agencies and commercial paper we re before April 1, 2005.

The following table summarizes the Company's investments in securities at December 31, 2003:

| | Cost | Unrealized Losses, net | Fair Market Value |
|---|---|---|---|
| | | (Dollars in thousands) | |
| Commercial paper | $27,702 | $ — | $27,702 |
| Cash | | | 6,955 |
| Total cash and investments | | | $34,657 |

As of December 31, 2003, all of the contractual maturities of the Company's commercial paper were before February 28, 2004.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

## 3. Property and Equipment

The following tables summarize the Company's property and equipment, net at December 31, 2004 and 2003:

| | 2004 | 2003 |
|---|---|---|
| | (Dollars in thousands) | |
| Network and other communication equipment | $ 145,789 | $ 187,001 |
| Equipment under capital leases | 2,140 | 21,020 |
| Office furniture | 2,608 | 2,623 |
| Business software and computer equipment | 27,128 | 29,302 |
| Vehicles | 866 | 1,300 |
| Leasehold improvements | 16,596 | 21,992 |
| Projects in Process | 210 | 209 |
| | 195,337 | 263,447 |
| Accumulated depreciation and amortization | (151,924) | (142,236) |
| Property and equipment, net | $ 43,413 | $ 121,211 |

The Company capitalizes interest on capital projects when the project involves considerable time to implement and major expenditures. Such interest is capitalized as part of the cost of the equipment and is amortized over the remaining life of the assets. Interest is capitalized based on the Company's incremental borrowing rate during the period of asset construction. In 2004, 2003 and 2002, the Company capitalized $0, $65,000, and $967,000, respectively, of interest related to capital projects.

Depreciation and amortization of property and equipment was $32.3 million, $43.8 million and $40.1 million for the years ended December 31, 2004, 2003 and 2002, respectively. Depreciation and amortization is computed using the straight–line method based on the following estimated useful lives:

| | |
|---|---|
| Equipment | 3 to 7 years |
| Vehicles | 5 years |
| Leasehold improvements | 20 years or life of lease, whichever is shorter |

During the first quarter of 2003, the Company changed its accounting estimates related to depreciation. The Company reduced the useful life for phone equipment provided to customers and computer hardware from 5 years to 3 years and extended the useful life of some leasehold improvements from 10 years to up to 20 years. As a result of the change, the Company incurred additional depreciation in the first quarter, which increased net loss for the year ended December 31, 2003 by $1.6 million or $0.04 per diluted share.

The Company reclassified $1.1 million related to a technology lease from depreciation expense to selling, general and administrative expenses for the year ended December 31, 2002. In management's opinion, the new classification more accurately presents the nature of the related expense in the Company's income statement based on the underlying transaction.

## 4. Impairment of Assets

In accordance with generally accepted accounting principles, in connection with the 2004 audit of the Company's year–end financial statements, the Company tested its long–lived tangible and intangible assets to determine whether the carrying amounts of such assets were recoverable from future undiscounted cash flows. Primarily as a result of ongoing price compression and recent industry trends in the dial–up Internet access market, the Company recorded non–cash asset impairment charges of $54.6 million for its tangible assets. In

performing the test, the Company determined that the total of the expected future undiscounted cash flows directly related to the existing service potential of the assets were less than the carrying value of the assets; therefore, an impairment charge was required. The Company engaged a third party valuation specialist to assist in the evaluation of the fair value of its assets using a sales comparison approach, as well as a replacement cost approach. The impairment charges represented the difference between the fair value of the property and equipment and its carrying value and are included within impairment of assets in the consolidated statements of operations. As a result of the asset impairments, a new cost basis was established for those assets that were impaired. The new cost basis resulted in a reduction of gross property and equipment and did not change the remaining estimated useful lives.

In accordance with the provisions of SFAS No. 142, "Goodwill and Other Intangible Assets," the Company tested its goodwill and intangible assets for impairment. The Company estimated fair value using a market comparables approach that resulted in goodwill impairment charges of $0.3 million during the fourth quarter of 2004.

## 5. Other Assets

At December 31, other assets consist of the following:

| | 2004 | 2003 |
|---|---|---|
| | (Dollars in thousands) | |
| Deferred financing costs | $ 1,038 | $ 1,635 |
| Acquisition of lease rights | 378 | 594 |
| Long-term portion of deferred installation costs | 251 | 311 |
| Prepaid maintenance | 587 | — |
| Long-term portion of prepaid expenses and deposits | 329 | 38 |
| Intangible assets | 81 | — |
| | $ 2,664 | $ 2,578 |

Deferred financing costs consist primarily of capitalized amounts for underwriter fees, professional fees and other expenses related to the issuance of the Company's debt. Amortization of deferred financing costs for the years ended December 31, 2004, 2003 and 2002 was $703,000, $434,000 and $693,000, respectively, and is included in interest expense in the accompanying consolidated statements of operations. During 2004, the Company incurred an additional $146,000 in deferred financing costs related to the Senior Secured Note transaction with Deutsche Bank AG — New York and $100,000 in deferred financing costs related to the secured financing arrangement with Merrill Lynch Capital. During 2003 and 2002, the Company purchased from holders of its Senior Notes an aggregate of $59.0 million and $54.9 million principal amount of Senior Notes. In connection with these transactions, the Company expensed $3.3 million of deferred financing costs associated with the Senior Notes redeemed. The Company also incurred additional deferred financing costs of $5.2 million in 2003 related to the issue of the Company's Senior Secured Note.

During 1999, the Company acquired lease rights of additional space in its Los Angeles facility. This amount is being amortized on a straight-line basis over the life of the lease, which is 81 months. Amortization expense for this facility was $216,000 for each year ended 2004, 2003 and 2002, and is included in amortization expense in the accompanying consolidated statements of operations.

In May 2004, the Company completed an agreement for maintenance with Cisco Systems, Inc. A $1.6 million note payable was exchanged for a 36-month maintenance services agreement. This is included in the accompanying consolidated balance sheet in other current assets, other assets, and other accrued liabilities. Additionally, the related expense is included in selling, general, and administrative expense in the accompanying consolidated statements of operations.

## 6. Restructuring Charges

A summary of the restructuring expenses and the associated remaining liability which is included in other accrued liabilities in the accompanying consolidated balance sheet as of December 31, 2004 and 2003 consist of the following:

| | Restructuring Liability as of Dec. 31, 2003 | Additional Restructuring Expense Incurred | Cash Payments | Restructuring Liability as of Dec. 31, 2004 |
|---|---|---|---|---|
| | | (Dollars in thousands) | | |
| Rent expense for vacated premises | $2,989 | $170 | $ (695) | $2,464 |
| Circuit obligations | 1,547 | 352 | (1,899) | — |
| Other charges | 6 | (6) | — | — |
| | $4,542 | $516 | $(2,594) | $2,464 |

| | Restructuring Liability as of Dec. 31, 2002 | Additional Restructuring Expense Incurred | Cash Payments | Restructuring Liability as of Dec. 31, 2003 |
|---|---|---|---|---|
| | | (Dollars in thousands) | | |
| Rent expense for vacated premises | $3,476 | $206 | $ (693) | $2,989 |
| Circuit obligations | 2,800 | — | (1,253) | 1,547 |
| Other charges | 87 | (81) | — | 6 |
| | $6,363 | $125 | $(1,946) | $4,542 |

The Company did not approve any new restructuring plan in 2004 and 2003. The balances of the restructuring liabilities relate to restructuring plans approved in June 2002 and August 2001. The 2002 restructuring plan primarily provided for the closure of the Company's switch facility in Colorado. The 2002 restructuring plan was in response to the further weakening of the economy, additional competitive pressure from competitors who had reorganized and lowered their cost structure, overcapacity in the Company's industry and lower demand from customers for its products and services.

The 2001 restructuring plan primarily provided for the suspension of the Company's expansion plans in certain states, exiting of certain lower margin products and services (including residential resale and customer owned and maintained (COAM) equipment) and undertaking certain cost reduction initiatives. In addition to restructuring certain product offerings, the restructuring initiatives included closing the Company's switch facility in Utah, consolidation of six sales offices, and a workforce reduction of approximately 200 employees. The workforce reduction was completed during the fourth quarter, with all severance payments being made as of December 31, 2001. The 2001 restructuring plan was in response to a weakening economy and increasing competitive pressure resulting from lower than expected demand for telecommunications services and overcapacity in the Company's industry, management shifted the Company's strategy to margin improvement, cost containment and cash conservation rather than top–line growth.

The amount of the reserve for vacated premises is equal to the monthly lease payment of the unoccupied space, less any estimated sublease income, multiplied by the remaining months on the lease. In regards to the Colorado facility, no sublease income was estimated due to the specialized nature of this facility. During the second quarter of 2004, the Company recorded additional restructuring charges of approximately $194,000 due to increased common area operating expenses at the Colorado facility. This amount was partially offset by reversals of $37,000 of previously recorded restructuring charges related to the timing and amounts for sublease income, primarily in San Diego. During the fourth quarter of 2004, the Company recorded additional

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

restructuring charges of $13,000 for an estimated increase in rent expense at the San Diego and San Francisco office locations. During the second and third quarters of 2004, the Company recorded additional restructuring charges of approximately $228,000 and $124,000, respectively, due to on–going negotiations to the amount owed for circuit commitment obligations, which the Company paid off during the third quarter of 2004. During the third quarter of 2004, the Company reversed $6,000 of previously recorded restructuring charges related primarily to professional fees that were anticipated but not incurred. The final cash payment to be recorded against the restructuring reserve is currently expected to occur in March 2010.

During 2003, the Company recorded additional restructuring charges of $206,000 relating to office space in San Diego, California. The amount of the reserve recorded is equal to the monthly lease payment of the unoccupied space multiplied by the remaining months on the lease. Sub–lease income was not anticipated in 2003 primarily due to economic conditions. In addition, during 2003, the Company reversed $81,000 of previously recorded restructuring charges relating to professional fees that were anticipated but not incurred.

During the second quarter of 2002, the Company recorded a $9.3 million restructuring charge in connection with the closure of its switch facility in Colorado. Of this amount, $3.3 million related to the write–off of the net book value of leasehold improvements and equipment which could not be redeployed to other locations and, in management's best estimate, had a fair market value of zero; $2.8 million related to circuit commitment obligations; and $3.2 million related to future rent payments due for the abandoned premise in Colorado which will be paid over the lease term, which ends in fiscal year 2010. In order to estimate rent expense related to this premise, and those premises discussed in the following paragraph, the Company made certain assumptions including; (1) the time period over which the premises would remain vacant, (2) sublease terms, and (3) estimated sublease rents. In the case of the Colorado switching facility and the Utah switching facility, no sublease income was estimated due to the specialized nature of these facilities and current economic conditions. Accordingly, the Company believed the net book value of the leasehold improvements for the facilities had a fair market value of zero.

In the third quarter of 2002, the Company recorded an additional restructuring charge of $21,000, net representing the net difference between the amount estimated and the actual net book value of impaired leasehold improvements. In the fourth quarter of 2002, the Company reduced its restructuring accrual for future rent payments for the Colorado switch facility by $0.2 million as the Company had to use the facility longer than anticipated due to a delay in transferring one of its customers to another carrier. As of December 31, 2003, the Company had a remaining liability for this restructuring activity of approximately $4.1 million. This lease expires in March 2010.

In the fourth quarter of 2002, the Company negotiated and paid an early termination penalty to satisfy all future rent payments due for its switch facility in Utah. Accordingly, the Company reversed previous charges of $0.5 million to bring the accrual for this facility to zero. As of December 31, 2003, the Company had a remaining liability of $0.4 million for this restructuring reserve.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

## 7. Other Accrued Liabilities

At December 31, other accrued liabilities consist of the following:

| | 2004 | 2003 |
|---|---|---|
| | (Dollars in thousands) | |
| Accrued restructuring charges | $ 2,464 | $ 4,542 |
| Accrued payroll and related expenses | 3,095 | 2,907 |
| Reserve for refunds to customers | 98 | 649 |
| General liability insurance | 503 | 790 |
| TelePacific Communications transaction deposits | 3,500 | — |
| Other | 2,785 | 2,808 |
| | $12,445 | $11,696 |

## 8. Debt and Capital Lease Obligations

At December 31, long–term debt and capital lease obligations consist of the following:

| | 2004 | 2003 |
|---|---|---|
| | (Dollars in thousands) | |
| Senior Notes | $36,102 | $36,102 |
| Senior Secured Note, net of discount of $16,134 | 24,500 | 18,369 |
| Capital lease obligations | 1,285 | 2,780 |
| Notes Payable | 6,040 | 69 |
| Less current portion of notes payable and capital leases | (2,889) | (2,606) |
| | $65,038 | $54,714 |

On December 19, 2003 the Company sold to Deutsche Bank AG — New York, acting through DB Advisors, LLC, as investment advisor (Deutsche Bank), as investment advisor, in a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended, a senior secured note in the principal amount of $40.0 million, (the Senior Secured Note), and warrants to purchase up to 26,666,667 shares of its common stock at an exercise price of $1.50 per share. The Senior Secured Note carries an interest rate of LIBOR plus 0.5% (3.02% at December 31, 2004), and matures in December 2006 (See Note 18). The maturity date of the Senior Secured Note will be automatically extended to coincide with any extension of the expiration date of the warrants, which is extendable for up to an additional 18 months at the option of Deutsche Bank. The Company allocated $18.2 million of the proceeds of the Senior Secured Note to debt and $21.8 million to the warrants on the basis of their relative fair values. The allocation of proceeds representing the fair value of the warrants to additional paid–in capital creates a discount on the Senior Secured Note. Under the terms of the guaranty and security agreement related to the Senior Secured Note, the Company has granted Deutsche Bank a security interest in substantially all of its assets and agreed to certain covenants including limitations on the Company's ability to incur additional indebtedness, incur liens, sell assets and pay dividends. As of December 31, 2004, the Company was in compliance with these covenants.

Accrued interest on the Senior Secured Note is payable quarterly in cash, or at the Company's option, may be capitalized and added to outstanding principal. In accordance with the terms of the Senior Secured Note, during 2004, the Company elected to capitalize and add to the outstanding principal balance interest of approximately $0.6 million, which is reflected as a non–cash operating and financing activity in the Company's Condensed Consolidated Statement of Cash Flows. As of December 31, 2004, the principal balance was

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

$40.6 million, the balance of the discount was $16.1 million and the effective interest rate was approximately 30%. During 2004 and 2003, the discount amortization was $5.5 million and $0.2 million, respectively. The Company has amortized the discount on an effective yield to maturity basis over the life of the note. Projected interest expense on this secured note (assuming that the note is held to maturity, no interest payments are deferred and the note is not extended a full 18 months) is as follows:

| | (Dollars in thousands) |
|---|---|
| 2005 | $ 7,116 |
| 2006 | 9,016 |
| | $ 16,132 |

The Senior Notes, of which there is $36.1 million in principal amount outstanding at December 31, 2004 and 2003, mature on February 1, 2009 and bear interest at 13.5% per annum payable in semiannual installments, with all principal due in full on February 1, 2009. In December 2003, the Company repurchased $59.0 million principal amount of Senior Notes in a tender offer. In 2002 the Company paid approximately $20.7 million to repurchase $54.9 million principal amount of Senior Notes. These transactions resulted in a loss (gain) (net of the write–off of related capitalized debt issuance costs and costs paid to outside parties to complete the transaction) of $3.7 million and $(33.8) million in 2003 and 2002 respectively.

In conjunction with the December 2003 tender offer for Senior Notes the Company also solicited consents to effect certain proposed amendments to the indenture governing the Senior Notes. These amendments to the indenture governing the Senior Notes, which are now effective, eliminated most of the indenture's principal restrictive covenants and amended certain other provisions contained in the indenture. As of December 31, 2004, the Company was in compliance with these covenants.

During the second quarter of 2004, the Company entered into a secured financing arrangement with Merrill Lynch Capital, a division of Merrill Lynch Business Financial Services, Inc., pursuant to which the Company may borrow up to an aggregate amount of $10.0 million, subject to certain conditions. This financing arrangement is structured in a manner that provides for multiple credit facilities up to an aggregate of $10.0 million with each facility having separate closing dates and repayment schedules. This secured financing arrangement expired on December 31, 2004. The principal and accrued interest of each facility shall be payable in 36 equal monthly installments. The Company has the option to prepay the outstanding facility after 18 months subject to a maximum premium of 3% of the outstanding facility. Interest on each facility will be fixed at 5% plus the 3–year swap rate, as published by Bloomberg Professional Services, determined two business days prior to the closing date of each facility. The Company used the proceeds of this financing arrangement to acquire new telecommunication switch and related equipment, which secure borrowings under this financing arrangement.

As of December 31, 2004, the Company had borrowed approximately $5.4 million under the Merrill Lynch Capital financing arrangement under two credit facilities both with interest rates of 8.6%. As of December 31, 2004, the principal balance was $4.7 million and is included under Notes Payable in the above table. In July 2004, approximately $2.1 million of these borrowings was paid directly to a vendor by Merrill Lynch Capital for an equipment acquisition and is reflected on the Company's Condensed Consolidated Statement of Cash Flows as a non–cash investing and financing activity.

In May 2004, the Company completed financing agreements for various network equipment with Cisco Systems, Inc. These financing agreements were comprised of $1.4 million of equipment capital leases and a $1.6 million note payable exchanged for a 36–month maintenance services agreement. These transactions are reflected on the Company's Condensed Consolidated Statement of Cash Flows as a non–cash investing and financing activity, and a non–cash operating and financing activity. As of December 31, 2004, the principal balance of the capital lease was $1.1 million and is included under Capital lease obligations in the above table.

As of December 31, 2004, the balance of the note payable was $1.3 million and is included under Notes Payable in the above table.

During the third quarter of 2003, the Company leased $0.8 million of equipment over a period of 24 months. This transaction is reflected on the Company's Condensed Consolidated Statement of Cash Flows as a non–cash investing and financing activity. As of December 31, 2004, the principal balance was $0.2 million and is included under Capital lease obligations in the above table.

As of December 31, 2004, future obligations related to Senior Notes, Senior Secured Note, Notes Payable (collectively Notes) and capital leases are as follows (projected interest on the Senior Secured Note was based on the interest rate at December 31, 2004 and not added to the outstanding principal):

| | Notes | Capital Leases |
|---|---|---|
| | (Dollars in thousands) | |
| 2005 | $ 8,705 | $ 747 |
| 2006 | 33,204 | 520 |
| 2007 | 6,281 | 173 |
| 2008 | 4,876 | — |
| 2009 | 36,508 | — |
| Total minimum note and lease payments | 89,574 | 1,440 |
| Less: portion representing interest | (22,932) | (155) |
| Present value of net minimum note and lease payments | 66,642 | 1,285 |
| Less: short–term portion | (2,255) | (634) |
| Notes and capital lease obligations, long–term portion | $ 64,387 | $ 651 |

## 9. Commitments and Contingencies

*Operating Leases*
The Company currently leases and operates seven principal facilities under non–cancelable operating leases as follows:

| Facility | Lease Expiration |
|---|---|
| Stockton, California | June 2006 |
| Stockton, California | September 2007 |
| Oakland, California | November 2008 |
| Los Angeles, California | September 2006 |
| Las Vegas, Nevada | October 2009 |
| Seattle, Washington | December 2009 |
| Phoenix, Arizona | April 2010 |

The Stockton lease expiring in June 2006 has three two–year renewal options remaining and the other facility leases contain two five–year renewal options, except for Oakland, which has one five–year renewal option. The Company also leases telephone equipment sites and telephone circuits on month–to–month, annual and long–term non–cancelable leases. As the Company's leased telephone circuit commitments are fulfilled, the leases convert to month–to–month agreements. Management of the Company expects that these leases will be renewed or replaced, as necessary, by other leases in the normal course of business.

## PAC–WEST TELECOMM, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company's restructuring programs, one approved and announced in the third quarter of 2001 and the other in the second quarter of 2002, included closing the Company's switch facilities in Utah and Colorado and the consolidation of six sales offices. All of these leases, except for the Colorado switch facility and two of the sales offices, have been terminated. The Company is subleasing both of the sales offices and continues to actively search for tenants to sublease the Colorado switch facility. Including the leases for the abandoned premises that the Company has not yet terminated less any sublease agreements in place, the Company's future minimum lease payments with initial terms in excess of one year as of December 31, 2004, are as follows:

| | Operating Leases | |
|---|---|---|
| | Space | Telephone Circuits and Equipment |
| | (Dollars in thousands) | |
| 2005 | $ 3,885 | $ 6,682 |
| 2006 | 3,278 | 3,132 |
| 2007 | 2,117 | 1,309 |
| 2008 | 1,444 | 449 |
| 2009 | 1,029 | — |
| 2010 and thereafter | 144 | — |
| | $11,897 | $11,572 |

Rental expense charged to operations for the years ended December 31, 2004, 2003 and 2002, for operating leases for space, excluding amounts charged against the restructuring liability, was $3.5 million, $3.5 million and $4.0 million, respectively. Rent expense is included in selling, general and administrative expense in the accompanying consolidated statements of operations. The Company expects to receive sublease income of approximately $0.2 million during 2005. Rental expense charged to operations for telephone circuits of approximately $30.0 million, $35.2 million and $40.4 million for the years ended December 31, 2004, 2003 and 2002, respectively, is included in network expenses in the accompanying consolidated statements of operations. Rental expense paid to related parties was approximately $0.4 million, $0.3 million and $0.3 million for the years ended December 31, 2004, 2003 and 2002, respectively.

### *Employment Agreements*

At December 31, 2004 the Company had the following employment agreements in place:

- an agreement with its Vice President and Founder created in 2004. This agreement provided for, among other things, a minimum annual base salary, fees based on services provided, benefits to be received, and job responsibilities;
- an agreement with its current President and Chief Executive Officer created in 2003. This agreement provided for, among other things, minimum annual base salaries, bonus entitlements upon the achievement of certain objectives, and the issuance of stock options;
- agreements regarding compensation and change in control with all of the Company's executive officers. These agreements provide for a lump sum payment equal to 150% of the executive's base salary, health plan benefits, and option treatment in the event of a merger or combination of the Company into another entity, or the sale or disposition of all, or substantially all, of the Company's assets; and
- an agreement with its current chairman and former chief executive officer, which provides for a minimum annual compensation level and other benefits.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The total annual value of the minimum base salary compensation for the agreements noted above is approximately $0.5 million.

*Other*

From time to time, the Company is subject to audits with various tax authorities that arise during the normal course of business. The Company believes resolutions to various tax audits that the Company may be involved with in the normal course of business, will not materially harm its business, financial condition or results of operations.

*Intercarrier Compensation and Legal Proceedings*

Amounts billed to ILECs and payments withheld by ILECs during each of the three years ended December 31, 2004, 2003 and 2002 are as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| | | (Dollars in thousands) | |
| Total amount billed to ILECs during the year | $ 54,242 | $ 79,635 | $ 82,217 |
| Amount withheld by ILECs and not recorded as revenue in the Company's statements of operations | (25,070) | (39,372) | (22,902) |
| Amounts received for prior withholding and recorded as revenue | 10,650 | 5,685 | 20,596 |
| Amounts received for prior withholding and netted against expenses | — | 1,115 | — |
| Net amount recorded as revenue from the ILECs during the year | $ 39,822 | $ 47,063 | $ 79,911 |

The Company has established interconnection agreements (ICAs) with certain ILECs. The Telecommunications Act of 1996 requires ILECs to enter into ICAs with CLECs, such as the Company, and other competitors and requires state Public Utilities Commissions (PUCs) to arbitrate such agreements if the parties cannot reach agreement. The ICAs govern, among other items, intercarrier compensation agreements for the exchange of local and local toll calls between the parties.

On March 29, 2002, SBC California (SBC) filed a Petition for Arbitration with the California Public Utilities Commission (CPUC) with respect to its ICA with the Company, which would replace the similar agreement that expired in June of 2001, but which was to continue in effect until replaced. On May 8, 2003, the CPUC announced its decision to adopt a modified alternate proposal of the ICA submitted by SBC. The new three–year agreement establishes the rules under which the Company and SBC can interconnect their networks to allow for the exchange of traffic, and the recovery of costs associated with exchanging such traffic. The ICA also recognizes that SBC may implement the Federal Communications Commission (FCC) Intercarrier Internet Service Provider (ISP) order, which creates separate intercarrier compensation arrangements, including rates, terms and conditions, for "presumed ISP–bound" traffic. The Company has disputed SBC's implementation of the FCC plan. The Company and SBC settled the disputes in July 2004.

The terms of the ICA also incent the Company to mo dify its existing network in order to avoid new transport charges imposed by SBC. Such network modifications cause additional costs on both an ongoing and one–time basis. The agreement also authorizes the Company to charge tandem switching and transport where appropriate.

On June 12, 2002, Verizon California (Verizon) filed a Petition for Arbitration with the CPUC with respect to its ICA with the Company, that would replace the similar agreement which expired in April of 2002, but continued in effect until replaced pursuant to an order of the CPUC. On June 2, 2003, the Company

filed with the CPUC the new ICA with Verizon which resulted from the arbitration. The new three–year agreement establishes the rules under which the Company and Verizon can interconnect their networks to allow for the exchange of traffic and the recovery of costs associated with exchanging such traffic. In addition it includes a new transport charge applicable to certain traffic and makes the intercarrier compensation rates established by the FCC Plan effective upon the commencement of the term of the new agreement. The terms of the agreement also incent the Company to modify its existing network. Such network modifications cause additional costs to the Company on both an ongoing and one–time basis. The agreement also authorizes the Company to charge tandem switching and transport where appropriate.

In July 2003 Verizon appealed the arbitration decision of the CPUC to Federal District Court, arguing among other things that the FCC Plan rates should have been made retroactive. The Company has opposed the relief sought by Verizon, and has challenged the legality of the new transport charges imposed on certain traffic.

The Company cannot predict the outcome of future CPUC proceedings, future appeals or additional pending cases involving related issues, or of the applicability of such proceedings to its ICA with these two or other ILECs. As a result, no assurance can be given that the Company will continue to collect intercarrier compensation, which represents a significant portion of its revenues, in the future, or that additional charges may not be imposed upon the Company under such agreements in the future. ISPs currently form a significant part of the Company's customer base in California and adverse decisions in these or related FCC proceedings could limit its ability to serve this group of customers profitably and may have a material adverse effect on us.

***Other Legal Proceedings***

On December 6, 2001, a complaint captioned Krim vs Pac–West Telecomm, Inc., et al., Civil Action No. 01–CV–11217, was filed in United States District Court for the Southern District of New York against the Company, certain executive officers, and various underwriters in connection with the Company's initial public offering. An amended complaint was filed on April 19, 2002. The plaintiffs allege that the Company and its officers failed to disclose alleged allocations of shares of the Company's common stock in exchange for excessive brokerage commissions or agreements to purchase shares at higher prices in the aftermarket, in violation of Section 11 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934. Substantially similar actions have been filed concerning the initial public offerings for more than 300 different issuers, and the cases have been coordinated as In re Initial Public Offering Securities Litigation, 21 MC 92. The complaint against the Company seeks unspecified damages on behalf of a purported class of purchasers of its common stock. In October 2002, the executive officers of the Company were dismissed from the action without prejudice by agreement with the plaintiffs which also resulted in tolling of the statute of limitations. The court dismissed the Section 10(b) claim against the Company in 2002.

On July 10, 2003, a committee of the Company's board of directors conditionally approved a proposed settlement with the plaintiffs in this matter. The settlement would provide, among other things, a release of the Company and of the individual defendants for the conduct alleged in the action to be wrongful in the plaintiff's complaint. The Company would agree to undertake other responsibilities under the settlement, including agreeing to assign away, not assert, or release certain potential claims the Company may have against its underwriters. Any direct financial impact of the proposed settlement is expected to be borne by the Company's insurers who participated in the negotiation of the settlement together with insurers representing other issuers in the class action case. The committee agreed to approve the settlement subject to a number of conditions, including the participation of a substantial number of other issuer defendants in the proposed settlement, the consent of the Company's insurers to the settlement, and the completion of acceptable final settlement documentation. Furthermore, the settlement is subject to a hearing on fairness and approval by the court overseeing the litigation.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

From time to time, the Company is a party to litigation that arises in the ordinary course of business. The Company believes that the resolution of this litigation, and any other litigation the Company may be involved with in the ordinary course of business, will not materially harm its business, financial condition or results of operations.

## 10. Stockholders' Equity

***Stock Options***

In January 1999, the Company's Board of Directors approved the terms of the 1999 Stock Incentive Plan (the "Plan") which authorizes the granting of stock options, including restricted stock, stock appreciation rights, dividend equivalent rights, performance units, performance shares or other similar rights or benefits to employees, directors, consultants and advisors. Options granted under the Plan have a term of ten years and substantially all options vest ratably over a four year period. In addition, options have been granted to two senior officers (both of whom are no longer officers) pursuant to the 1998 Griffin and Bryson Non–Qualified Stock Incentive Plans. In May 2000 the Board of Directors approved the 2000 Napa Valley Non–Qualified Stock Incentive Plan. At December 31, 2004 the Company had approximately 0.4 million shares available for grant under these incentive plans.

In November 2001 the Company offered to exchange options that were previously issued. As a result, in December 2001 the Company canceled 831,638 options and issued new options to eligible employees on June 18, 2002.

A summary of the status of the Company's stock option plans at December 31, 2004 and changes during the years ended December 31, 2002, 2003 and 2004 is presented in the table below:

| | Shares | Weighted Average Exercise Price |
|---|---|---|
| | (In thousands except exercise price) | |
| Balance, December 31, 2001 | 3,879 | $3.06 |
| Granted | 1,395 | 0.46 |
| Exercised | (223) | 0.48 |
| Cancelled | (492) | 4.62 |
| Balance, December 31, 2002 | 4,559 | 2.22 |
| Granted | 990 | 1.13 |
| Exercised | (69) | 0.49 |
| Cancelled | (532) | 3.95 |
| Balance, December 31, 2003 | 4,948 | 1.84 |
| Granted | 372 | 1.63 |
| Exercised | (86) | 0.47 |
| Cancelled | (165) | 2.93 |
| Balance, December 31, 2004 | 5,069 | 1.81 |

## PAC–WEST TELECOMM, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Options outstanding, exercisable and vested by price range at December 31, 2004 are as follows:

| Range of Exercise Price | Number Outstanding | Weighted Average Remaining Contractual Life | Weighted Average Exercise Price | Number Vested And Exercisable | Weighted Average Exercise Price of Options Exercisable |
|---|---|---|---|---|---|
| | (Shares in thousands) | | | | |
| $ 0.27 – 0.28 | 142 | 7.7 | $ 0.28 | 69 | $ 0.28 |
| 0.41 – 0.60 | 1,613 | 6.9 | 0.50 | 1,145 | 0.49 |
| 0.66 – 0.96 | 1,224 | 7.1 | 0.79 | 1,077 | 0.79 |
| 1.00 – 1.48 | 131 | 9.1 | 1.23 | 24 | 1.22 |
| 1.59 – 2.37 | 1,028 | 6.2 | 2.12 | 708 | 2.13 |
| 2.53 – 3.50 | 397 | 6.6 | 2.74 | 299 | 2.79 |
| 4.06 – 4.29 | 325 | 5.9 | 4.06 | 324 | 4.06 |
| 6.25 – 9.13 | 13 | 5.8 | 7.68 | 11 | 7.87 |
| 10.00 – 14.75 | 143 | 4.9 | 10.14 | 143 | 10.14 |
| 17.50 – 25.13 | 49 | 5.4 | 18.66 | 49 | 18.66 |
| 31.25 – 35.00 | 4 | 5.2 | 33.83 | 4 | 33.83 |
| 0.27 – 35.00 | 5,069 | 6.7 | 1.81 | 3,853 | 2.00 |

As of December 31, 2003, the number of options outstanding that were vested and exercisable was 3,144,119. These options had a weighted average exercise price of $2.19. As of December 31, 2002, the number of options outstanding that were vested and exercisable was 2,192,502. These options had a weighted average exercise price of $2.70.

In October 2003, the Company amended certain terms, including the extension of the post termination exercise period, of previously issued options to a current officer and to a former officer and current director of the Company. Upon separation, incremental compensation cost of $1.4 million related to each of the options held by both the chairman of the board and the chief executive officer, would be recognized over the remaining future service period of such awards.

### *Pro Forma Fair Value Information*

The Company uses the Black–Scholes option–pricing model to derive the theoretical fair value of employee stock option grants.

The fair value of each option was estimated on the date of grant using the Black–Scholes option pricing model with the following assumptions:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| Risk–free interest rate | 2.95% | 2.58% | 3.39% |
| Expected volatility | 110% | 108% | 100% |
| Expected dividend yield | — | — | — |
| Expected life | 4 years | 4 years | 4 years |
| Fair value of options granted | $ 1.23 | $ 0.83 | $ 0.33 |

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

*Employee Stock Purchase Plan*

The Company established the 2000 Employee Stock Purchase Plan (the Purchase Plan) under which one million shares of common stock have been reserved for issuance. Full–time employees may designate up to 10% of their compensation, not to exceed 1000 shares each six–month period, or $25,000 worth of common stock in any one calendar year, which is deducted each pay period for the purchase of common stock under the Purchase Plan. On the last business day of each six–month period, shares of common stock are purchased with the employees' payroll deductions at 85% of the lesser of the market price on the first or last day of the six–month period. The Purchase Plan will terminate no later than May 2, 2020. During 2004 and 2003, a total of 115,359 and 77,751 shares of common stock with a weighted average fair value of $1.12 and $0.62 per share were purchased. At December 31, 2004, 579,695 shares remained available for issuance. Pro forma compensation cost has been computed for the fair value of the employees' purchase rights, which was estimated using the Black–Scholes model with the following assumptions: expected dividend yields of 0% for 2004, 2003 and 2002; expected life of 0.5 years for 2004, 2003 and 2002; expected volatility of 84% for 2004, 123.0% for 2003 and 100.0% for 2002 (based on the volatility period of the purchase plan); and risk–free interest rates of 1.5% for 2004, 1.1% for 2003 and 1.8% for 2002. The weighted–average fair value of those purchase rights granted in 2004, 2003 and 2002, was $0.47, $0.29 and $0.20, respectively.

*Performance Unit Awards*

In December 2003, the Company granted its President and Chief Executive Officer (the CEO) the right to receive performance unit awards over 400,000 shares of common stock (before any stock split, reverse stock split or stock dividend) under an employment agreement. Under the agreement, 200,000 performance unit awards shall become vested provided the CEO remains employed by the Company through June 30, 2007 or in the event of a change in control as defined in the Company's 1999 Stock Incentive Plan. In addition, the remaining 200,000 performance unit awards will vest provided that the CEO remains employed by the Company through June 30, 2008 or in the event of a change in control as defined in the Company's 1999 Stock Incentive Plan. The agreement provides for accelerated vesting in the event that the monthly average fair market value of the Company's common stock is greater than or equal to $3.00 per common share for a period of six consecutive calendar months commencing on or after January 1, 2004.

The Company recorded additional paid in capital and deferred stock compensation of $768,000 (based on the Company's share price of $1.92) on the date of these performance units were awarded. The expected cost of these shares will be reflected in income on a straight line basis over the performance period. Assuming there is no accelerated vesting of the awards the expense for 2005 is projected to be $0.2 million. This will be included in selling, general and administrative expenses.

*Stock Warrants*

On December 19, 2003 the Company sold to Deutsche Bank (the Transaction) the Senior Secured Note. This Transaction provided, among other things, that the Company issue stock warrants to purchase up to 26,666,667 shares of its common stock at an exercise price of $1.50 per share. See note 8 for more information. The fair value of the warrants was estimated using the Black–Scholes model with the following assumptions as of the Transaction date: expected dividend yield of 0%; expected life of three–years; expected volatility of 135%; and risk–free interest rate of 0.8%. The fair value of the warrants was $40.5 million on the date of the Transaction, and the relative fair value was $21.8 million (see Note 18).

*Adjustment to chairman's and executives' options*

On August 17, 2004, the Company amended the term of option grants previously awarded to its executives, including: Wayne Bell, Vice President Sales and Marketing; H. Ravi Brar, Chief Financial Officer and Vice President of Human Resources; Michael Hawn, Vice President Customer Network Services; and

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

John Sumpter, Vice President Regulatory. The amendments to the terms of the option grants previously awarded to each of the executives provided for:

- immediate vesting of all unvested stock options held by the executive in the event the executive is demoted or employment is involuntarily terminated by the Company or a successor without cause at any time during a twenty–one month period beginning nine months prior to the effective date of a possibility of a future change in control and;

- extension of the post termination period to exercise such option grants from 90 days to 365 days following termination of executive's employment. The total number of option grants previously awarded and amended was 824,000 and the total pro forma incremental compensation expense based upon the intrinsic value of the option grants previously awarded to the officers was $117,350 on August 17, 2004.

Upon a triggering event as defined by the amendment, the Company will record incremental compensation cost related to each of the option grants awarded to the officers. There was no compensation expense recorded as of December 31, 2004.

In October 2003 the Company amended the term of options previously granted to its chairman and also to its chief executive officer. These amendments provided:

- in the case of the Company's chairman, the modification provided for (a) accelerated vesting such that each option shall be fully vested and exercisable upon termination of employment period under his employment agreement other than resignation without good cause or termination for cause and (b) to extend post termination exercise period such that it expires on the expiration date of each grant which ranges from September 2008 to December 2011. On the modification date, the Company's chairman held options to purchase 1,095,694 shares of Company common stock, which had a weighted average exercise price of $2.49 per share and the Company's stock price was $2.60 per share. As The Company calculated incremental compensation expense of $1.4 million based upon the intrinsic value on the modification date. As there was no separation event as of December 31, 2004, there is no compensation expense recognized in the consolidated statement of operations for the year ended December 31, 2004 and;

- in the case of the Company's chief executive officer, the amendment provided for (a) accelerated vesting such that each option shall be fully vested and exercisable upon termination of employment period under his employment agreement other than resignation without good cause or termination for cause and (b) to extend post termination exercise period such that it expires on the expiration date of each grant which ranges from June 2011 to December 2012. On the modification date, the Company's chief executive officer held options to purchase 500,000 shares of our common stock, which had a weighted average exercise price of $1.43 per share and the Company's stock price was $4.31 per share. The Company calculated incremental compensation expense of $1.4 million based upon the intrinsic value on the modification date. As there was no separation event as of December 31, 2004, there is no compensation expense recognized in the accomp anying consolidated statement of operations for the year ended December 31, 2004.

### 11. Income (Loss) Per Share

For the years ended December 31, 2004 and 2003, potential common stock was antidilutive, as it decreased the net loss per share. Accordingly, 1,910,000 and 1,265,000 shares were excluded from the diluted

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

net loss per share calculation for 2004 and 2003, respectively. Diluted net (loss) income per share information for the years ended December 31, 2004, 2003 and 2002 is as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| | (Dollars in thousands except per share amounts) | | |
| Net (loss) income | $(75,033) | $(15,250) | $ 2,046 |
| Weighted average shares outstanding–basic | 36,655 | 36,481 | 36,308 |
| Effect of dilutive securities | — | — | 26 |
| Weighted average shares outstanding–diluted | 36,655 | 36,481 | 36,334 |
| Net (loss) income per share–basic and diluted | $ (2.05) | $ (0.42) | $ 0.06 |

## 12. Income Taxes

The (benefit from) provision for income taxes for the years ended December 31, 2004, 2003 and 2002 consists of the following:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| | (Dollars in thousands) | | |
| Current: | | | |
| Federal | $ — | $ (949) | $ — |
| State | — | (305) | 77 |
| Deferred: | | | |
| Federal | — | (3,966) | 223 |
| State | — | (1,280) | 445 |
| | $ — | $(6,500) | $745 |

The Company's (benefit from) provision for income tax differed from the amount computed by applying the statutory Federal income tax rate to income before income taxes as follows:

| | 2004 | | 2003 | | 2002 | |
|---|---|---|---|---|---|---|
| | Amount | Rate | Amount | Rate | Amount | Rate |
| | (Dollars in thousands) | | | | | |
| Income tax determined by applying the statutory federal income tax rate to (loss) income before income taxes | $(26,261) | (35.0)% | $(7,613) | (35.0)% | $ 977 | 35.0% |
| State income taxes, net of federal income tax benefit | (3,949) | (5.3) | (1,030) | (4.7) | 339 | 12.2 |
| Non–deductible amortization of costs in excess of net assets of acquired businesses | — | — | — | — | — | — |
| Nondeductible goodwill impairment | — | — | — | — | — | — |
| Valuation allowance | 30,156 | 40.2 | 1,940 | 8.9 | — | — |
| Changes in reserves | — | — | 19 | 0.1 | 22 | 0.1 |
| Other | 54 | 0.1 | 184 | 0.8 | (593) | (20.6) |
| (Benefit from) provision for income taxes | $ — | —% | $(6,500) | (29.9)% | $ 745 | 26.7% |

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The cumulative balance sheet effects of deferred tax items are:

| | 2004 | 2003 |
|---|---|---|
| | (Dollars in thousands) | |
| Trade accounts receivable allowances | $ 158 | $ 676 |
| Deferred revenue | 250 | 322 |
| Vacation and other accrued expenses | 332 | 356 |
| Restructuring and other reserves | 1,068 | 1,960 |
| Inventory reserves | 66 | 84 |
| Other reserves | 174 | 252 |
| Tax credits and loss carryforwards | 18,306 | 9,116 |
| State taxes | — | 1,416 |
| Basis difference on depreciable and amortizable assets | 15,275 | — |
| Deferred tax asset | 35,629 | 14,182 |
| State taxes | (663) | — |
| Basis difference on depreciable and amortizable assets | — | (10,476) |
| Prepaid expenses | (706) | (101) |
| IRU rentals | (2,164) | (1,665) |
| Deferred tax liability | (3,533) | (12,242) |
| Net deferred tax asset | 32,096 | 1,940 |
| Valuation allowance | (32,096) | (1,940) |
| Net deferred tax liability | $ — | $ — |

Management has established a valuation allowance for the portion of deferred tax assets for which realization is uncertain. The net change in the total valuation allowance for the year ended December 31, 2004 was an increase of $30.2 million. The net change in the total valuation allowance for the year ended December 31, 2003 was an increase of $1.9 million.

As of December 31, 2004 the Company had net operating loss carryforwards for Federal and state income tax purposes of approximately $49.9 million and $28.0 million, respectively, available to reduce future income subject to income taxes. The Federal net operating loss carryforwards expire beginning in 2021 through 2024. State net operating loss carryforwards expire in 2014.

As of December 31, 2004, unused California Enterprize Zone tax credits of approximately $2.0 million are available to reduce future California income taxes. California Enterprize Zone tax credits carry forward indefinitely until utilized.

Federal and state laws impose substantial restrictions on the utilization of net operating loss and tax credit carryforwards in the event of an "ownership change," as defined in Section 382 of the Internal Revenue Code. The Company does not believe that its utilization of net operating loss carryforwards and tax credit carryforwards should be significantly restricted.

## 13. Related Party Transactions

*Bay Alarm Company (Bay Alarm)*

Bay Alarm (a stockholder of the Company) and its subsidiary, InReach Internet, LLC, are collectively a large customer of telephone network services, comprising approximately 1.3% of the Company's revenues for

both the years ended December 31, 2004 and 2003. As of December 31, 2004 and 2003 the Company had amounts receivable from Bay Alarm of $0 and $8,000, respectively. These amounts are included in trade accounts receivable, net in the accompanying consolidated balance sheets.

The Company leases a facility in Oakland from Bay Alarm. Rents paid under this lease were $359,000, $334,000 and $289,000 for the years ended 2004, 2003 and 2002, respectively. Bay Alarm provides the Company with security monitoring services at its normal commercial rates. The Company has recorded an immaterial amount (less than $100,000) for these services in each of the years ended December 31, 2004, 2003 and 2002. All expenses paid to Bay Alarm are included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

*Notes Receivable from Stockholders*

In 1998, a stockholder of the Company, who is also an officer, purchased 37,500 shares of common stock from the Company for $250,000. The Company received $50,000 in cash from the stockholder and entered into a note receivable for the remaining balance of $200,000. This amount was fully repaid in 2003.

**14. Retirement Plan:**

The Company has a 401(k)–retirement plan (the Plan) for all full–time employees who have completed 90 days of service. The plan year is from January 1 to December 31, and the Company contributes $0.50 for every $1.00 contributed by the employee, subject to a limit of 3 percent of the employee's salary. Participants become fully vested after six years, although they vest incrementally on an annual basis after two years of service. The Company's matching contributions were $451,000, $303,000 and $378,000 for the years ended December 31, 2004, 2003 and 2002, respectively. These amounts are included in selling, general and administrative expenses in the accompanying consolidated statements of operations.

**15. Segment Reporting**

Based on criteria established by SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," the Company has determined that it has one reportable operating segment. While the Company's chief decision–maker monitors the revenue streams of various services, the revenue streams share many expenses such as leased transport charges and circuits. In addition, operations are managed and financial performance is evaluated based upon the delivery of multiple services over common networks and facilities. This allows the Company to leverage its costs in an effort to maximize return. As a result, the revenue streams share almost all of the various operating expenses. Because management believes that any allocation of the expenses to multiple revenue streams would be impractical and arbitrary, management does not currently make such allocations internally. The chief decision–maker does, however, monitor revenue streams at a more detailed level than those depicted in the Company's accompanying consolidated financial statements.

PAC–WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The significant revenue components for the years ended December 31, 2004, 2003 and 2002 are as follows:

| | 2004 | 2003 | 2002 |
|---|---|---|---|
| | (Dollars in thousands) | | |
| Intercarrier compensation | $ 39,822 | $ 47,062 | $ 79,912 |
| Direct billings to SP customers | 42,925 | 44,971 | 41,505 |
| Direct billings to Enterprise customers | 19,526 | 17,337 | 12,861 |
| Outbound local and long distance | 11,409 | 12,706 | 13,236 |
| Dedicated transport | 4,277 | 5,573 | 8,942 |
| Switched access | 5,303 | 6,046 | 7,165 |
| Other | 744 | 945 | 477 |
| | $ 124,006 | $ 134,640 | $ 164,098 |

## 16. Unaudited Quarterly Consolidated Financial Data

The following is a summary of quarterly consolidated financial results for the fiscal years ending 2004, 2003 and 2002.

| | March 31 | June 30 | September 30 | December 31 |
|---|---|---|---|---|
| | (Dollars in thousands except per share amounts) | | | |
| 2004: | | | | |
| Revenue | $ 29,423 | $ 27,837 | $ 31,652 | $ 35,094 |
| Gross margin | $ 18,931 | $ 16,689 | $ 23,117 | $ 25,435 |
| Net loss | $ (7,165) | $ (9,105) | $ (3,127) | $ (55,636) |
| Net loss per share: | | | | |
| Basic and Diluted | $ (0.20) | $ (0.25) | $ (0.08) | $ (1.52) |
| 2003: | | | | |
| Revenue | $ 30,515 | $ 45,723 | $ 30,312 | $ 28,090 |
| Gross margin | $ 19,817 | $ 38,718 | $ 21,483 | $ 18,336 |
| Net income (loss) | $ (10,324) | $ 9,171 | $ (4,314) | $ (9,783) |
| Net income (loss) per share: | | | | |
| Basic and Diluted | $ (0.28) | $ 0.25 | $ (0.12) | $ (0.27) |
| 2002: | | | | |
| Revenue | $ 43,092 | $ 38,499 | $ 34,201 | $ 48,306 |
| Gross margin | $ 29,332 | $ 24,492 | $ 21,723 | $ 35,026 |
| Net income (loss) | $ 7,384 | $ (13,388) | $ 4,889 | $ 3,161 |
| Net income (loss) per share: | | | | |
| Basic and Diluted | $ 0.20 | $ (0.37) | $ 0.13 | $ 0.09 |

The fourth quarter of 2004 includes an impairment of assets charge of $54.9 million.

The first quarter of 2002 includes a gain on extinguishment of debt of $11.9 million.

The second quarter of 2002 includes a restructuring charge of $9.3 million and an impairment of assets charge of $7.2 million.

The third quarter of 2002 includes a gain on extinguishment of debt of $14.9 million.

PAC-WEST TELECOMM, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The fourth quarter of 2002 includes a gain on extinguishment of debt of $7.0 million, an impairment of assets charge of $9.4 million and in revenues a settlement for various disputes of $15.8 million.

## 17. Goodwill and Other Intangible Assets

During the first quarter of 2004, the Company completed its acquisition of the assets and certain of the liabilities of Sentient Group, Inc., a small provider of fully hosted, managed voice and data services for business communications. The acquisition has been accounted for as a purchase and, accordingly, the total estimated purchase price has been allocated to the tangible and intangible assets acquired based on their respective fair values on the acquisition date. Intangible assets were recorded for the customer base in the amount of $86,000 and is being amortized over 15 years. As of December 31, 2004, the balance of these intangible assets were $81,000 and are recorded in other assets in the consolidated balance sheet.

The excess of the cash purchase price, $576,000, over the fair value of tangible and intangible net assets acquired was recorded as Goodwill in the amount of $375,000. As of December 31, 2004, the balance of goodwill was reduced to $119,000 as a result of an asset impairment.

## 18. Subsequent Events

On March 11, 2005, the Company sold the majority of its enterprise customer base to U.S. TelePacific Corp. (TelePacific) while retaining its associated network assets. Under the terms of this transaction, TelePacific acquired certain assets and assumed certain liabilities associated with the enterprise customers in exchange for $26.9 million in cash. In addition, the Company entered into a transition service agreement with TelePacific that, among other things, obligates it to provide certain transition services to TelePacific at its estimated cost, for a one-year period subject to extension for two additional three-month periods.

Pursuant to the terms of the Payoff Letter (the "Payoff Letter"), by and between the Company and Deutsche Bank, the Company utilized the proceeds from the sale of its enterprise customer base to TelePacific on March 11, 2005, as well as cash on hand, to prepay in full its Senior Secured Note (including all outstanding principal and accrued and unpaid interest), and retired the related warrants to acquire up to 26,666,667 shares of the Company's common stock in connection with the Senior Secured Note.

On March 11, 2005, the Company determined that, in connection with the completion of the sale of the enterprise customer base, it recorded net restructuring and other charges of approximately $750,000, primarily consisting of employee separation costs for employees previously associated with the enterprise customer base. Out of this amount, the Company anticipates that future cash expenditures associated with the separation plan will be approximately $300,000. This separation plan will impact approximately 150 employees, the majority of which were involuntary terminations. The Company anticipates that the majority of the employees associated with this separation plan will leave their positions by the end of 2005.

# PAC–WEST TELECOMM, INC.

## SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS

### (Dollars in thousands)

### FOR THE YEAR ENDED DECEMBER 31, 2004

| Description | Balance at Beginning of Year | Charged to Costs and Expenses | Deductions | Balance at End of Year |
|---|---|---|---|---|
| Allowance for doubtful accounts | $1,560 | $(183) | $1,011(1) | $366 |

### FOR THE YEAR ENDED DECEMBER 31, 2003

| Description | Balance at Beginning of Year | Charged to Costs and Expenses | Deductions | Balance at End of Year |
|---|---|---|---|---|
| Allowance for doubtful accounts | $1,660 | $192 | $292(1) | $1,560 |

### FOR THE YEAR ENDED DECEMBER 31, 2002

| Description | Balance at Beginning of Year | Charged to Costs and Expenses | Deductions | Balance at End of Year |
|---|---|---|---|---|
| Allowance for doubtful accounts | $2,630 | $1,008 | $1,978(1) | $1,660 |

(1) Deductions represent write–offs.

# EXHIBIT 5

## Legal Proceedings

## Item 3. *Legal Proceedings*

On December 6, 2001, a complaint captioned Krim vs Pac–West Telecomm, Inc., et al., Civil Action No. 01–CV–11217, was filed in United States District Court for the Southern District of New York against the Company, certain executive officers, and various underwriters in connection with our initial public offering. An amended complaint was filed on April 19, 2002. The plaintiffs allege that the Company and its officers failed to disclose alleged allocations of shares of the Company's common stock in exchange for excessive brokerage commissions or agreements to purchase shares at higher prices in the aftermarket, in violation of Section 11 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934. Substantially similar actions have been filed concerning the initial public offerings for more than 300 different issuers, and the cases have been coordinated as In re Initial Public Offering Securities Litigation, 21 MC 92. The complaint against the Company seeks unspecified damages on behalf of a purported class of purchasers of its common stock. In October 2002, the executive officers of the Company were dismissed from the action without prejudice by agreement with the plaintiffs, which also resulted in tolling of the statute of limitations. The court dismissed the Section 10(b) claim against the Company in 2002.

On July 10, 2003, a committee of the Company's board of directors conditionally approved a proposed settlement with the plaintiffs in this matter. The settlement would provide, among other things, a release of the Company and of the individual defendants for the conduct alleged in the action to be wrongful in the plaintiff's complaint. The Company would agree to undertake other responsibilities under the settlement, including agreeing to assign away, not assert, or release certain potential claims the Company may have against its underwriters. Any direct financial impact of the proposed settlement is expected to be borne by the Company's insurers who participated in the negotiation of the settlement together with insurers representing other issuers in the class action case. The committee agreed to approve the settlement subject to a number of conditions, including the participation of a substantial number of other issuer defendants in the proposed settlement, the consent of the Company's insurers to the settlement, and the completion of acceptable final settlement documentation. Furthermore, the settlement is subject to a hearing on fairness and approval by the court overseeing the litigation.

From time to time, the Company is a party to litigation that arises in the ordinary course of business. The Company believes that the resolution of this litigation, and any other litigation the Company may be involved with in the ordinary course of business, will not materially harm its business, financial condition or results of operations.

In addition the Company is also a party to various legal proceedings relating to intercarrier compensation payment and other interconnection agreement issues. These are discussed in more detail in "Business — Regulation" in item 1 to this form 10–K.

interconnect their networks to allow for the exchange of traffic and the recovery of costs associated with exchanging such traffic. In addition, like the SBC agreement, it includes a new transport charge applicable to VNXX Calls and makes the intercarrier compensation rates established by the FCC Plan effective upon the commencement of the term of the new agreement. The terms of the agreement also incent us to modify our existing network in order to avoid these transport charges. Such modifications have been completed. We expect that intercarrier compensation will continue to represent a significant portion of our revenues in the future although, based on current market conditions, we expect the per minute intercarrier compensation rate will continue to decline from historic rates under interconnection agreements in the future. Furthermore, the policies of the CPUC and other regulatory bodies are subject to change with respect to issues, which affect the economic structure of interconnection agreements in other ways, and these issues can differ from time to time.

*Regulatory Legal Proceedings*

In July 2003 Verizon appealed the arbitration decision of the CPUC to Federal District Court, arguing among other things that the FCC Plan intercarrier compensation rates, which are contained in the new agreement but lower than the comparable rates in the agreement being replaced, should have been made retroactive. We have opposed the relief sought by Verizon, and have challenged the legality of the new transport charges imposed on VNXX traffic. It is not possible to determine the outcome of this proceeding at this time.

*Nevada Regulatory Proceedings and Judicial Appeals*

In September 1999, Nevada Bell filed suit in U.S. Federal District Court in Reno to overturn a Public Utilities Commission of Nevada decision requiring Nevada Bell to pay us intercarrier compensation for terminating traffic to Internet service providers. On March 21, 2001, in ruling on cross–motions for summary judgment, the district court vacated the Public Utilities Commission of Nevada decision and remanded the matter to the Public Utilities Commission of Nevada with instructions to redo its analysis regarding intercarrier compensation. We appealed this decision to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit upheld the district court and the matter have been remanded to the Public Utilities Commission of Nevada. It is not possible to determine the outcome of this proceeding at this time.

*Local Regulation*

Our network is subject to numerous local regulations such as building codes and licensing requirements. Such regulations vary on a city–by–city and county–by–county basis. To the extent we decide in the future to install our own fiber optic transmission facilities, we will need to obtain rights–of–way over private and publicly owned land and pole attachment authorizations. There can be no assurance that such rights–of–way or authorizations will be available to us on economically reasonable or advantageous terms. We could also be subject to unexpected franchise requirements and be required to pay license or franchise fees based on a percentage of gross revenues or some other formula.

**Employees**

As of December 31, 2004, we had 373 employees. We believe that our future success will depend on our continued ability to attract and retain highly skilled and qualified employees. None of our employees are currently represented by a collective bargaining agreement. We also believe that we enjoy good relationships with our employees. As a result of the recent sale of our enterprise customer base to TelePacific, as of March 14, 2005 our employee base was reduced to approximately 250 employees. The reduction in force was due to terminations of our employees primarily responsible for enterprise customers.

**Available Information**

Our Annual Report on Form 10–K, Quarterly Reports on Form 10–Q, Current Reports on Form 8–K and amendments to reports filed pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended, are available free of charge on our Investor Relations web site at www.pacwest.com as soon as