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FPSC - COMMISSION CLERK

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

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

DEBTORS.

CHAPTER 11

EIN: 45-1144038; 68-0383568; 74-2729541; 20-3399903; 74-3023729; 38-3659257; 37-1441383; 27-2200110; 27-4254637

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AUSTIN, TEXAS 78730

JOINTLY ADMINISTERED UNDER
CASE NO. 13-10570

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DEBTORS' MOTION TO EXTEND THE EXCLUSIVE PERIODS FOR THE FILING OF A CHAPTER 11 PLAN OF REORGANIZATION AND SOLICITATION OF ACCEPTANCES THEREOF

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

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

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

TO THE UNITED STATES BANKRUPTCY JUDGE TONY M. DAVIS:

COMES NOW UPH Holdings, Inc., ("UPH"), Pac-West Telecom, Inc., ("Pac-West"), Tex-Link Communications, Inc. ("Tex-Link"), UniPoint Holdings, Inc. ("UniPoint Holdings"), UniPoint Enhanced Services, Inc. ("UniPoint Enhanced"), UniPoint Services, Inc., ("UniPoint"),

nWire, LLC (“nWire”), and Peering Partners Communications, LLC (“Peering Partners”) (collectively the “Debtors”), and debtors-in-possession in the above-captioned Chapter 11 cases and file this their Debtors’ Motion to Extend the Exclusive Periods for the Filing of a Chapter 11 Plan of Reorganization and Solicitation of Acceptances Thereto (“Motion”). In support of the Motion, the Debtors would show:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested in this Motion is sought pursuant to 11 U.S.C. § 1121(d).

II. FACTUAL BACKGROUND

2. On March 28, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue in possession of their property and management of its business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been requested or appointed. The Office of the United States Trustee has appointed an official committee of unsecured creditors in these cases (the “Committee”).

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

4. The Debtors filed these Chapter 11 cases to pursue a reorganization. The Debtors expect to continue core activities pertaining to each of its business units during the reorganization process, including focusing upon its telecommunication business, and anticipate emerging successfully from Chapter 11. The instant Motion is directed at the Debtors' request to extend the period during which the Debtors have an exclusive right to file a plan of reorganization.

III. RELIEF REQUESTED

5. Pursuant to this Motion, the Debtors request an extension of the period during which the Debtors have an exclusive right to file a plan of reorganization ("Exclusive Filing Period") by ninety (90) days through and including September 23, 2013, and extending the period during which the Debtors have the exclusive right to solicit acceptances thereof ("Exclusive Solicitation Period," and together with the Exclusive Filing Period, the "Exclusive Periods") through and including November 22, 2013, or sixty (60) days after the expiration of the Exclusive Filing Period, as extended, without prejudice to the right of the Debtors to seek further extensions of the Exclusive Periods.

IV. BASIS FOR RELIEF

6. Pursuant to § 1121(b) of the Bankruptcy Code, a debtor has an exclusive right to file a plan of reorganization during the first 120 days following the commencement of the case. Pursuant to § 1121(c)(3) of the Bankruptcy Code, if the debtor files a plan during this period, an additional sixty (60) day period is automatically granted during which time the debtor may exclusively solicit acceptances of the plan of reorganization.

7. Section 1121(d) of the Bankruptcy Code provides that the Court may extend these exclusive periods for cause. 11 U.S.C. § 1121(d) ("[O]n request of a party in interest and after notice and a hearing, the court may for cause reduce or increase the 120 day period or the 180 day period referred to in this section.") Although the Bankruptcy Code does not define the term "cause" for the purposes of § 1121(d), it is well established that the standard is intended to be flexible and its

application is committed to the sound discretion of the Court. *See, e.g., First American Bank of New York v. Southwest Gloves and Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re Reetz*, 61 B.R. 412, 414 (Bankr. W.D. Wisc. 1986). Reference to the legislative history of § 1121(d) makes clear that Congress intended for the exclusive periods to be of an adequate length, given the circumstances, for the debtor to formulate and negotiate a viable plan of reorganization while avoiding the distractions and disruption to the business that would result from competing plans. *See In re Public Service Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D. N.H. 1988) (observing that “the legislative intent . . . [is] to promote maximum flexibility.”).

8. When determining whether cause exists to extend the debtor’s exclusivity periods, courts have considered a variety of non-exclusive factors including the following (a) the size and complexity of the debtor’s cases; (b) the existence of good faith progress toward reorganization; (c) a finding that the debtor is not seeking the extension to pressure its creditors; (d) the fact that the debtor is paying its bills as they come due; (e) the length of time the case has been pending; (f) whether the debtor has made progress in negotiating with creditors; and (g) the existence of unresolved contingencies. *See, e.g., In re Express One Int’l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1987); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *In re Grand Traverse Development Co., Ltd.*, 147 B.R. 418 (Bankr. W.D. Mich. 1988); *see also In re Adelphia*, 342 B.R. 122, 131 (Bankr. S.D.N.Y. 2006) (discussing various factors to be considered, but noting that the focus was on whether “debtors had made a good faith progress toward reorganization and whether the extension of exclusivity was sought to pressure creditors to submit to debtor’s reorganization demands.”).

9. In the instant case, the above factors support an extension of the Exclusive Periods in this case and there is compelling “cause” to extend the Debtors’ Exclusive Filing Period through and including September 23, 2013 and the Exclusive Solicitation Period through and including November

2013. The Debtors should be allowed a full and fair opportunity to file a consensual plan of reorganization and to solicit acceptances of that plan of reorganization. The Debtors' cases are both large and complex. Additionally, the Debtors commenced these cases only about three months ago. During the short pendency of their cases, the Debtors have worked diligently to administer their estates. The Debtors' efforts have centered around reorganization of their operations and negotiating with their creditors and secured lenders. The Debtors have also analyzed their executory contracts and unexpired leases, and to date, filed four omnibus motions to reject numerous executory contracts and unexpired leases of nonresidential real property.

10. Importantly, the Debtors have recently taken steps to implement bidding and sales-related procedures. The Debtors' estates are best served by permitting the Debtors with time to focus on maximizing returns from a sale of their assets. Moreover, because the Debtors operate in the highly competitive industry of telecommunications, extension of the Exclusive Periods is fundamentally necessary. Extending the Exclusive Periods will thus provide the Debtors with time and flexibility required to determine the ultimate disposition of the Leases in conjunction with their plan of reorganization. In addition, allowing the Debtors a reasonable opportunity to focus on their attempts at a sale and to formulate a plan of reorganization through the requested extension will not prejudice or harm the Debtors' creditors or any other parties-in-interest.

11. The Debtors are not seeking an extension of the Exclusive Periods to delay creditors. Indeed, the Debtors believe that the relief requested herein will likely increase the likelihood of a greater distribution to the Debtors' creditors by fostering a plan process that is as orderly, efficient, and cooperative as possible. If, however, the Exclusive Periods are allowed to terminate, or the Debtors are forced to attempt to formulate and prosecute a plan of reorganization while they attempt to formulate and prosecute a sale, then the threat of multiple plans would not only increase the

administrative costs to the Debtors' estate, but could also undermine the Debtors' ability to confirm any plan at all, and could also undercut the Debtors' ability to maximize the return from a sale. The Debtors respectfully submit that the requested extension of the Exclusive Periods will thus not harm the Debtors' creditors or any other party in interest, and the relief requested herein will not result in a delay of the plan process; instead, it will actually permit the plan process to move forward in an orderly and expeditious fashion. Accordingly, extension of the Exclusive Periods as requested herein is in the best interest of creditors and the Debtors' estates.

WHEREFORE, PREMISES CONSIDERED the Debtors respectfully request that the Court enter an order (i) extending the period during which the Debtors have an exclusive right to file a plan of reorganization ("Exclusive Filing Period") by ninety (90) days through and including September 23, 2013, and (ii) extending the period during which the Debtors have exclusive right to solicit acceptances thereof (herein "Exclusive Solicitation Period," and together with the Exclusive Filing Period, the "Exclusive Periods") through and including November 22, 2013, or sixty (60) days after the expiration of the Exclusive Filing Period, as extended, without prejudice to the right of the Debtors to seek further extensions of the Exclusive Periods.

Dated: July 8, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July 2013, a true and correct copy of the foregoing was served via the Court's CM/ECF electronic notification system on all parties requesting same, and via US first class mail, post prepaid to the parties listed below, and on the attached service list.

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