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ATTORNEYS FOR COGENT COMMUNICATIONS, INC.

**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.

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

6500 RIVER PL. BLVD., BLDG. 2, # 200 AUSTIN, TEXAS 78730	§	JOINTLY ADMINISTERED UNDER CASE NO. 13-10570
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CHAPTER 11

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OBJECTION OF COGENT COMMUNICATIONS, INC. TO DEBTORS' NOTICE OF CURE AMOUNTS AND ASSUMPTION AND/OR ASSIGNMENT OF EXECUTORY CONTRACTS

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COME NOW, Cogent Communications, Inc. ("*Cogent*"), and files this, its Objection of Cogent Communications, Inc. to Debtors' Notice of Cure Amounts and Assumption and/or

Assignment of Executory Contracts (“*Objection*”) and in support thereof, would show the Court the following:

I. PROCEDURAL BACKGROUND

1. On March 28, 2013 (the “*Petition Date*”), UPH Holdings, Inc., (“*UPH*”), Pac-West Telecomm, Inc., (“*Pac-West*”), Tex-Link Communications, Inc., (“*Tex-Link*”), UniPoint Holdings, Inc. (“*UniPoint Holdings*”), UniPoint Enhanced Services, Inc. (“*UniPoint Enhanced Services*”), UniPoint Services, Inc., (“*UniPoint Services*”), nWire, LLC (“*nWire*”), and Peering Partners Communications, LLC (“*Peering Partners*”) (one, some or all of the foregoing debtors, as the case may be, are, hereinafter, the “*Debtors*”), filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “*Bankruptcy Code*”) pursuant to which the Debtors have remained debtors-in-possession of their assets¹.

II. FACTUAL BACKGROUND

2. Prior to the *Petition Date*, UniPoint Enhanced Services and/or UniPoint Services, individually and/or collectively, as the case may be, entered into one or more network service agreements and/or customer subscriber agreements (individually and/or collectively, as the case may be, “*Network Service Agreements*”) pursuant to which Cogent provided UniPoint point-to-point and dedicated internet access services to UniPoint in locations across the country. A true and correct copy of at least one of the *Network Service Agreements* (and/or its “*Terms & Conditions*”) is attached hereto as **Exhibit “A”** and is incorporated herein by reference for all purposes.

3. In addition, prior to the *Petition Date*, Pac-West and Cogent entered into one or more *Colocation and Dedicated Internet Access agreements* (“*Colocation Agreements*”) pursuant to which Cogent provided cage colocation space and power to Pac-West in Oakland, California. A true and

correct copy of at least one of the Colocation Agreements is attached hereto as **Exhibit “B”** and is incorporated herein by reference for all purposes (the Network Service Agreements and the Colocation Agreements are hereinafter collectively referred to as the “*Agreements*”).

4. Prior to the Petition Date, the Debtor defaulted on their payment obligations under one, some or all of the Agreements.

5. Section 4.4 of the Network Services Terms & Conditions North America provides in pertinent part as follows:

4.4. If Customer defaults in any of its payment obligations under the (subject agreement), Customer agrees to pay COGENT’s reasonable expenses, including but not limited to legal and collection agency fees, incurred by COGENT in enforcing its rights.

6. Subsequent to the Petition Date, and specifically on or about April 18, 2013, the Debtors filed their Schedules of Assets and Liabilities (“*Schedules*”) and Statement of Financial Affairs in certain of the above styled cases [see D.E. 109 in UPH Case No. # 13-10570, D.E. 10 in Unipoint Holdings Case No. 13-10573 and D.E. 9 in Unipoint Enhanced Case No. 13-10574]. In each Schedule “F”, Cogent was listed as an unsecured “trade debt” creditor in the amount of \$326,886.00. A true and correct copy of one Schedule F page is attached hereto as **Exhibit “C”** and incorporated herein by reference for all purposes.

7. In addition, Schedule G of the Schedules filed in Unipoint Holdings Case No. 13-10573, which purports to list all of the Debtor’s(s’) executory contracts and unexpired leases, included “Network Services and Terms” with “Cogent” for “Bandwith... executed ... 12/22/2005” as the Debtors’ unexpired executory contracts with Cogent.

8. On or about April 18, 2013, the Debtors filed their Second Omnibus Motion for Order

¹ Subsequent to the Petition Date, the Court entered an order requiring the bankruptcy cases of the Debtors to be jointly administered under UPH Case No. 13-10570.

Approving the Rejection of Unexpired Contracts & Leases Nunc Pro Tunc to Petition Date [D.E. 105] (“*Second Omnibus Rejection Motion*”), pertinent portions of which are attached hereto as **Exhibit “D”** and incorporated herein by reference for all purposes.

9. Pursuant to the Second Omnibus Motion, the Court entered an order on May 15, 2013 [D.E. 185] (the “*Second Omnibus Rejection Order*”), allowing the Debtor to reject certain “unexpired contracts and leases” with Cogent and/or related circuits expressly identified in Exhibit “A” to the Second Omnibus Rejection Motion as follows:

- (a) Fiber Port/1-26891300;
- (b) VLAN/1-26891562;
- (c) VLAN/1-26891573;
- (d) VLAN/1-59075838;
- (e) VLAN/1-35232953;
- (f) VLAN/1-26891716;
- (g) VLAN/1-26891738;
- (h) VLAN/1-26891727;
- (i) Fiber Port/Orlando/ Order: 1-21730341;
- (j) Fiber Port/Dallas/ Order: 1-25882951; and
- (k) Fiber Port/St. Louis/ Order: 1-25889206.

10. On or about June 20, 2013, the Debtors filed their Motion for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II) Authorizing the (A) Sale of Substantially all the Debtors’ Assets, (B) the Payment of the Net Proceeds of Sale to Hercules Technology II. L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases [D.E.255].

11. On or about June 28, 2013, the Court entered that certain Order Granting Debtors’ Motion for Entry of Orders (I) Approving Procedures and Providing Certain Protections and (II)

Authorizing the (A) Sale of Substantially all the Debtors' Assets, (B) the Payment of the Net Proceeds of Sale to Hercules Technology II. L.P., and (C) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases [D.E. 280] ("*Sale Procedures Order*").

12. Pursuant to the Sale Procedures Order, the Debtors were authorized to, *inter alia*, conduct an auction sale ("*Auction Sale*") of substantially all of their assets ("*Assets*"), including, their rights in various unexpired leases and executory contracts (collectively, the "*Executory Contracts*"), free and clear of all claims, encumbrances, interests, per the auction bid process described in the Sale Procedures Order.

13. In connection with the Auction Sale, the Sale Procedures Order and/or that certain Order Establishing Cure Procedures and Deadlines [D.E. 281] ("*Cure Procedures Order*") required the Debtors to prepare and/or serve "a schedules (sic) of proposed cure amounts (the "*Cure Amounts*") for any contract the Debtors anticipate the ultimate purchaser may assume (per a sale approved by the bankruptcy court)." See *Cure Procedures Order*, p.2. The Sale Procedures Order further provided that any objection a non-debtor co-party listed in the Cure Notice had to the proposed cure amount was due to be filed on or before "5:00 p.m. prevailing Central Time on July 15, 2013." See *Sale Procedures Order*, p.2.

14. On or about July 3, 2013, the Debtors filed and/or served, and Cogent subsequently received, a Notice of Cure Amounts and Deadline for Objection to Cure Amounts [D.E. 293] ("*Cure Notice*") which listed several Agreements with Cogent subject to assumption and/or assignment by the Debtors, -- to-wit:

- (a) a "Service Level Agreement (no date)";
- (b) eleven (11) different "Customer Subscriber Agreements," dated various dates between March 10, 2002, and November 17, 2004 (with one exception which did not list a date);
- (c) a "Network Service Addendum-Colo North America, dated April 30, 2008"; and
- (d) a "Colocation Services Agreement dated April 30, 2008"

(collectively, the “*Proposed Cogent Assumption Contracts*”). Interestingly, the cure amount for all Proposed Cogent Assumption Contracts listed in the Cure Notice was “0”.

15. On or about July 9, 2013, the Debtors filed their Fifth Omnibus Motion for Order Approving the Rejection of Unexpired Contracts & Leases Nunc Pro Tunc to Petition Date [D.E. 105] (“*Fifth Omnibus Rejection Motion*”), pertinent portions of which are attached hereto as Exhibit “E” and incorporated herein by reference for all purposes.

16. Pursuant to the Fifth Omnibus Rejection Motion, the Debtors sought to reject certain “unexpired contracts and leases” identified in Exhibit “A” to the Fifth Omnibus Rejection Motion, i.e., the following expressly denoted “circuits”:

- (a) UNIPOINT90001 1-25882951;
- (b) UNIPOINT90001 1-59076003;
- (c) UNIPOINT90001 1-59075955;
- (d) UNIPOINT90001 1-35233021;
- (e) UNIPOINT90001 1-26891551;
- (f) UNIPOINT90001 1-26891639;
- (g) UNIPOINT90001 1-26891595; and
- (h) UNIPOINT90001 1-51972367.

III. RESPONSE

17. Cogent repeats, restates, reiterates and realleges paragraphs 1 through 16 hereinabove as though set forth at length herein.

18. 11 U.S.C. §365 provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default ...and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

19. Cogent objects to the assumption and/or assignment of any portion of the Agreements to the extent the Debtors have failed to satisfy, *inter alia*, Section 365 (b) (1), which requires the Debtors to not only cure all monetary and non-monetary defaults under same, but also provide, *inter alia*, adequate assurance of future performance of the obligations due Cogent under said Agreements as well as compensate Cogent for its pecuniary loss relating to same.

20. Cogent specifically asserts that not only does the Cure Notice substantially understate the “Cure Amount” required to cure all defaults under the Agreements, same is irreconcilable with the Debtors own records, i.e., Schedule F² and impossible to coordinate with the specific accounts, services and/or circuits subject to the Agreements³. At present, the actual “Cure Amount” Cogent has calculated totals no less than \$641,098.12 in prepetition amounts due pursuant to the Colocation Agreements, \$109,376.78 due pursuant to the Network Services Agreements, and \$12,500.00 for attorneys fees and costs, as evidenced in part by the invoices attached hereto as Exhibit “F” and incorporated herein by reference for all purposes, for a total of \$762,974.90.

21. As adequate assurance of future performance, the Debtors and/or the successful bidder should be required to post a bond or security deposit equal to no less than one month of anticipated billings under the Agreements.

22. Cogent reserves the right to amend, revise and/or supplement this Objection at any time prior to the closing on any assumption and/or assignment of the Agreements pursuant to Section

²The Cure Notice, interestingly enough, listed the cure amount as “0” notwithstanding the fact and that Schedule F filed in no less than three of the above styled cases listed Cogent as having an unsecured claim of \$326,886.00.

365 of the Bankruptcy Code and/or the Auction Sale.

WHEREFORE ALL PREMISES CONSIDERED, Cogent requests that the cure amount for the Agreements (constituting Executory Contracts) be deemed to be no less than the amounts set forth above totaling \$762,974.90, the assumption and/or assignment of the Agreements be denied assignment compliance by the Debtors with 11 U.S.C. §365, and that the Court afford Cogent such other and further relief as to which it may show itself to be justly entitled.

Respectfully submitted,

SCHEEF & STONE, L.L.P.

By: /s/ Peter C. Lewis

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**ATTORNEYS FOR COGENT
COMMUNICATIONS, INC.**

³ Cogent specifically asserts that the Debtors should be required to revise the Cure Notice so that the level of specificity regarding the Executory Contracts set forth therein is equivalent to, at minimum, that utilized by Debtors in the Second Omnibus Rejection Motion and/or Fifth Omnibus Rejection Motion, thereby affording Cogent a reasonable ability to more accurately determine the actual cure amount due Cogent with respect to the Agreements.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection of Cogent Communications, Inc. to Debtors' Notice of Cure Amounts and Deadline for Objection to Cure Amounts was served by first-class mail, postage prepaid, telecopy, certified mail, return receipt requested and/or by electronic notification to the persons and/or entities registered with CM/ECF on this the 15th day of July, 2013.

/s/ Peter C. Lewis
PETER C. LEWIS

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202 US Route One, Suite 206
Falmouth, ME 04105

One Communications/Earthlink
5 Wall Street
Burlington, MA 01803

America OnLine
22000 AOL Way
Dulles, VA 20166

Telesense
Cabs Department
P.O. Box 364300
Las Vegas, NV 89133-6430

Cox Communications
1550 W. Deer Valley Rd.
Phoenix AZ 85027

CenturyLink
P.O. Box 2961
Phoenix, AZ 85062-2961

Frontier
P.O. Box 92713
Rochester, NY 14692-0000

Samsara
1250 S Capital of Texas
Highway
Bldg 2-235
West Lake Hills, TX 78746

Telus Corporation
215 Slater Street
Ottawa, Ontario, K1P 5N5
CANADA

Bandwidth.Com, Inc.
75 Remittance Drive, Suite 6647
Chicago, IL 60675

Cogent Communications
P.O. Box 791087
Baltimore, MD 21279-1087

La Arcata Development Limited
ATTN: ACCOUNTS RECEIVABLE
c/o NAI Reco Partners
1826 N. Loop 1604 W, #250
San Antonio, TX 78248

Alpheus Communication
Attn: SVP – Contract
Administration
1301 Fannin, 20th Floor
Houston, TX 77002

Pac Bell
P.O. Box 166490
Atlanta, GA 30321-0649

Genband, Inc.
ATTN: Eric Hinton
2801 Network Blvd
Suite 300
Frisco, TX 75034

Grande Communications
Network
Dept 1204
P.O. Box 121204
Dallas, TX 75312-1204

Hines REIT One Wilshire, LP
Attn: Kevin McNerny
624 S. Grand Avenue
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Los Angeles, CA 90017

Arent Fox LLP
1050 Connecticut Ave. N.W.
Washington, DC 20036-5339

FPL FiberNet LLC
TJ412-01-0-R
ATTN: FISCAL SERVICES
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Holdings, Inc. UniPoint Enhanced
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Dedicated Internet Access

Cogent Communications, Inc.

Customer Order Form

1016 8th Street
Washington, DC 20007

Optical Internet

North America
US

www.cogent.com

Customer and Order Information

Customer Name	Unipoint Holdings	Resell Customer (Name)	No
Customer Description	Access / Order	Agent Deal (Name)	No
Order Date	2 Aug 2011	Legacy Order Termination (Delay)	Terminable Termination
Requested Service Date	5 Aug 2011		

Service Information

Product Type	Optical (Net Capable)	Quoted Currency	USD	US Dollars
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Service Parameters

Order Number	Order Type	Legacy Order Number	Cogent Node Id	Service Interface	Bandwidth CDR Mbps	Initial Term Months	Billing Model	Burst Fee (per Mbps) USD	Installation Fee USD	Base Monthly Fee USD
1-7966562	Move	1-26891589 1-50770002 1-26222479 1-51972997 1-26891513 1-26891629 1-26891551 1-26891573 1-26891624	TUS-1	Fast-E	100	12	Flat Rate	N/A	500.00	1,000.00

Options Note: Multiple VLAN and IPv6 option orders charge here an initial Term of one (1) month.

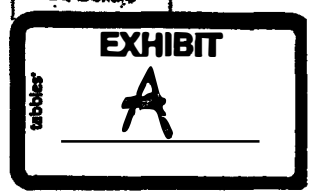
Order Number	Description	Comments	Option Selected	Installation Fee USD	Monthly Fee USD
	Public IP Addresses	As described in IP Questionnaire or IAFM Rider			
	BGP-4 Routing	As described in BGP Questionnaire			
	MultiBGP <small>(Note: COGENT billed by means of Secondary ASN's needs to be identified with Order Form.)</small>	Order Type Legacy Order # Secondary ASN Owner Secondary ASN Port Order #			
	VLAN(s) w/ static routing <small>(Note: COGENT billed by means of Secondary IP's needs to be identified with Order Form.)</small>	Order Type Legacy Order # Secondary IP's Owner Secondary IP's Port Order #			
	IPv6	Order Type Legacy Order # Port Configuration Port Order #			
	DNS Hosting	As described in Product Rider			
	Expedite Delivery	As described in Product Rider			
	Billing Options <small>(As described in Product Rider)</small>	Billing Method Master Service Other Involved Services			
	Cabling <small>(As described in Product Rider)</small>	Product Comments Port Order #			
	Equipment	As described in Product Rider			

Total Fees	Installation Fee USD	Monthly Fee USD
Total Fees including Options	500.00	1,000.00

Customer has elected to be billed in a currency other than the currency used for the Quoted Price. The Quoted Price will be converted into the Billing Currency at the time the Order is processed by COGENT. In the event the customer is billed on such date, COGENT will use the current conversion rate of the Billing Currency for the previous day at 00:00 GMT.

Billing Currency	USD	US Dollars
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Initials: Customer: *MA*





Dedicated Internet Access

Cogent Communications, Inc.

1015 31st Street
Washington, DC 20007

Optical Internet

Customer Order Form

North America

www.cogent.com

Customer Service Delivery Information

Tenant/Datacenter Name	Unipoint Holdings
Node ID	1105-1
Service Address	111 Eighth Ave
State / Floor	Switch and Data
City, State, Province	New York, NY
Postal Code	10011
Country	USA

* Service delivery points listed please at Cogent Demarcation Point as defined in the attached Product Rider.

Delivery Contact Name	Chris Richard
Telephone	512-735-1235
Cellphone	
Fax	512-735-1232
Email	richard@unipoint.com

Cogent Contact Information

Sales Office	Location	Herndon, VA (Resident)
	Address	HQ: 1015 31st Street Washington, DC 20007
	Phone	877-876-3310
	Fax	703-935-8783
Service Provisioning	ed@cogentco.com	
Customer Care	support@cogentco.com	

Customer Contracting & Billing Information

Company Name	Unipoint Holdings
Billing Address	8500 Riverchase Blvd
Suite / Floor	Blvd 2, 2nd Floor
City, State, Province	Austin, TX
Postal Code	78730
Country	USA
Company Registr. Nr.	
Tax / VAT ID Number	
Request for consolidated billing (one account / invoice for multiple ports in the same country)*	Yes

* Consolidated billing requests must be reviewed and approved by Cogent.

Billing Contact Name	Linda Richard
Telephone	512-735-1235
Cellphone	
Fax	512-735-1232
Email	richard@unipoint.com

Sales Account Manager	Name	John Elliott
	Phone	703-438-7918
	Email	john.elliott@cogentco.com
Sales	sales@cogentco.com	
Billing	billing@cogentco.com	
Termination	terms@cogentco.com	

Contract Documents:

The entire Customer Subscriber Agreement (CSA), entered into between Customer and COGENT, is made up of the documents listed here. Capitalized terms are defined in the text of the Terms or Definition 4.6.6.6 of the Terms. All prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning such Services, are superseded. Customer certifies that the documents constituting the CSA are the documents and forms that have been supplied to Customer by Cogent and that Customer has made no changes to them.

(1) Order Form

(2) Terms, as attached (Inlined by Customer) (For current customers, if Terms are not attached, the current Terms remain in force)

(3) SLA (http://www.cogentco.com/files/na_internet/SLA_on_Internet.pdf)

(4) Product Rider, as attached (Signed by Customer)

(5) Any other Rider or Addendum, as attached (signed by Customer)

Notes

Signatures:

By signing below, Customer affirms and acknowledges that it has read the entire CSA and agrees to be bound by the provisions thereof.

For Customer

For

Cogent Communications, Inc.



Signature: [Handwritten Signature]
 Printed Name: Mike Holloman
 Title: Resident CEO
 Date: 8/11/13

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Network Services Terms & Conditions North America (Ver. 02/08)
Confidential

© Cogent Communications, Inc. 2008



Optical Internet

NETWORK SERVICES TERMS & CONDITIONS NORTH AMERICA

1. SERVICES AND TERM

1.1. Pursuant to the CSA, Cogent will provide the Services to Customer for the Service charges. Customer's signature on the Order Form or use of the Service or COGENT's Network constitutes its acknowledgment and agreement to be bound by the CSA. Capitalized terms are defined at the end of these Terms.

1.2. Each Service's Initial Term is indicated on the applicable Order Form. Customer will be deemed to have accepted the Service as of the Service Date. At the end of the Initial Term, the CSA will renew for successive Renewal Terms equal in length to the Initial Term unless and until terminated as provided herein.

1.3. Customer may order additional Services or locations in North America through additional Order Forms, which will be governed by this CSA. Customer's account must be current in order to make changes to Services or order additional Services.

2. SERVICE CHARGES AND BILLING

2.1. Service charges are on the Order Form and do not include applicable Taxes unless so indicated. New services or upgrades/relocations will result in additional fees/charges. If a prior Service location remains installed after a new Service location is installed, Customer will be responsible for Service charges for both Service locations until terminated as provided for each Service.

2.2. Invoices are sent monthly, in advance. Customer agrees to pay all charges and applicable Taxes for the Service upon receipt of the invoice without counterclaim, set-off or deduction. A late charge shall be added to Customer's past due balance of the lesser of 1.5% per month or the maximum legal rate. COGENT may change the specifications, Terms or charges for the Service for any upcoming Renewal Term by providing Customer at least sixty (60) days advance written notice. Customer agrees that its obligation to pay service charges and Taxes under this CSA shall survive the termination of the CSA.

2.3. Customers claiming tax exemption must provide COGENT with a properly executed exemption form.

3. SERVICE USE AND INTERRUPTION

3.1. Customer's use of COGENT's Services or Network may only be for lawful purposes and must comply with COGENT's AUP. Transmission of any material in violation of any law, regulation or the AUP is strictly prohibited. Access to other networks connected to COGENT's Network must comply with such other networks' rules. Only Customers whose service location (as set forth on the Order Form) is a COGENT-owned or carrier neutral data center may resell COGENT's Dedicated Internet Access Service (but not any other Service offered in such location). Customers located in any other service location may not resell their Service, in whole or in part.

3.2. COGENT's obligations and Customer's exclusive remedies for failure of COGENT's Network or any Service are stated in the COGENT SLA.

4. TERMINATION, RESTRICTION OR SUSPENSION

4.1. Prior to the Service Date, COGENT may terminate the CSA, if not approved by COGENT corporate management (including credit check). COGENT also may restrict, suspend or terminate the CSA, Customer's use of or access to any Service, or both, at any time if (a) Customer is in material breach of the CSA (including but not limited to the AUP); and, in COGENT's sole judgment, an immediate restriction or suspension is necessary to protect the COGENT Network or COGENT's ability to provide services to other customers; or (b) Customer's account is unpaid sixty (60) days after date of invoice; or (c) COGENT facilities at

Customer's location are unavailable, (i.e., no connectivity and building access).

4.2. Either Party may terminate the CSA: (a) at the end of an Initial Term or Renewal Term by providing the other Party with at least thirty (30) days prior written notice (notice provided during a monthly Renewal Term will not be effective until the end of the next month (i.e., notice received April 20th is effective June 1st); or (b) except as otherwise stated herein, during an Initial Term or Renewal Term if the other Party breaches any material term or condition of this CSA and fails to cure such breach within thirty (30) days after receipt of written notice of the same.

4.3. If a Service is terminated prior to the Service Date, Customer shall pay COGENT for all Initial Costs for such Service. If the Service is terminated after the Service Date, Customer shall pay COGENT (a) for the Service up through the date of termination; and (b) except in the case of termination by Customer as provided in Section 4.2 above, or by COGENT due to loss of connectivity or building access at Customer's building(s) under Section 4.1(c) above, the Initial Costs (unless already paid) and the Termination Charge. Customer acknowledges that because actual damages to COGENT caused by early termination of a Service order are uncertain and would be difficult to determine, the Termination Charge is a reasonable liquidated damage and is not a penalty. Any reconnections of the Service shall result in additional reconnection charges to Customer at COGENT's then-prevailing rates.

4.4. If Customer defaults in any of its payment obligations under the CSA, Customer agrees to pay COGENT's reasonable expenses, including but not limited to legal and collection agency fees, incurred by COGENT in enforcing its rights. All termination notices by Customer must be sent separately for each Service (including terminating one Service location after a Service is switched to a new Service location) and must be sent to terms@cogetco.com.

5. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

5.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND NEITHER COGENT NOR ANY OF ITS PROVIDERS, LICENSORS, OFFICERS, EMPLOYEES, OR AGENTS MAKES ANY WARRANTY, CONDITION OR GUARANTEE WITH RESPECT TO THE SERVICES OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICES, UNDER THIS CSA OR OTHERWISE. THE SERVICES ARE PURCHASED WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. COGENT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. COGENT DOES NOT MONITOR, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR, THE CONTENT OF ANY COMMUNICATION TRANSMITTED BY CUSTOMER OR OTHERS, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SERVICES.

5.2. WITHOUT PREJUDICE TO OR LIMITING OF COGENT'S RIGHT TO RECEIVE PAYMENT FOR SERVICES, COGENT'S ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THE AGREEMENT AND ALL OTHERS BETWEEN CUSTOMER AND COGENT, AND THE PROVISION BY COGENT OF FACILITIES, TRANSMISSION, DATA, SERVICES OR EQUIPMENT INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL PERSONAL PROPERTY, SHALL NOT EXCEED THE LESSER OF (A) THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE AT ISSUE IN THE PRIOR SIX (6) MONTHS TO THE ACTION GIVING RISE TO THE CLAIM, OR (B) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) IN TOTAL, PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY FOR DEATH OR PERSONAL INJURY CAUSED BY COGENT, OR FOR ANY

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OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

5.3. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND NOT SUBJECT TO COGENT'S CONTROL. CUSTOMER AGREES THAT COGENT SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE SERVICES ARE TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF, INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO COGENT'S CONTROL, OR FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER INFORMATION CARRIED ON SUCH NETWORKS OR INTERNET SERVICE PROVIDERS. COGENT SHALL HAVE NO LIABILITY HEREUNDER FOR DAMAGES INCURRED OR SUMS PAID DUE TO ANY FAULT OF CUSTOMER OR ANY THIRD PARTY, OR BY ANY HARMFUL COMPONENTS (SUCH AS COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, AND "GENERAL OF SERVICE" ATTACKS). COGENT IS NOT LIABLE FOR ANY BREACH OF SECURITY ON THE CUSTOMER'S NETWORK, REGARDLESS OF WHETHER ANY REMEDY PROVIDED IN THIS CSA FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER AGREES THAT IT WILL NOT HOLD COGENT RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICES (INCLUDING THOSE WITH WHOM COGENT MAY CONTRACT TO OPERATE THE SERVICES), OR HOLD A THIRD PARTY RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, COGENT IN CONNECTION WITH THE SERVICES. WITHOUT LIMITING THE FOREGOING, CUSTOMER AGREES THAT IT WILL NOT HOLD COGENT RESPONSIBLE FOR (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES; (B) LOSS OF OR DAMAGE TO CUSTOMER'S RECORDS OR DATA OR THOSE OF ANY THIRD PARTY, OR (C) LOSS OR DAMAGE TO CUSTOMER ASSOCIATED WITH THE NONOPERABILITY OF CUSTOMER'S EQUIPMENT OR APPLICATIONS WITH ANY COMPONENT OF THE SERVICES OR THE COGENT NETWORK. CUSTOMER AGREES TO MAKE ALL CLAIMS RELATED TO THE SERVICES DIRECTLY AGAINST COGENT, AND WAIVES ANY RIGHT TO RECOVER DAMAGES (DIRECTLY OR BY INDEMNITY) RELATED TO THE SERVICES BY CLAIMING AGAINST OR THROUGH A THIRD PARTY TO THIS CSA.

5.4. NEITHER COGENT NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING (INCLUDING SUSPENDING OR DISCONTINUING SERVICES) OR SUPPORTING THE SERVICES SHALL BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SERVICES OR INABILITY TO USE THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

5.5. NO ACTION OR PROCEEDING AGAINST COGENT MAY BE COMMENCED BY THE CUSTOMER MORE THAN ONE (1) YEAR AFTER THE LAST DAY ON WHICH THE SERVICE WHICH IS THE BASIS FOR THE ACTION IS RENDERED, AND CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION CONSTITUTES AN EXPRESS WAIVER OF ANY RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS WHICH WOULD OTHERWISE AFFORD ADDITIONAL TIME FOR SUCH A CLAIM.

6. **INDEMNITY.**

6.1. Customer will indemnify, defend and hold harmless COGENT and its directors, officers, employees, affiliates, and its agents and subcontractors from and against any claims, suits, actions, and proceedings from any and all third parties, and for payment of any Losses, to the extent such Losses arise (a) as a result of non-compliance by Customer with its obligations under the CSA; (b) from any and all claims by any of Customer's customers or other third party end users in connection with a Service (including, without limitation, any claims regarding content transmitted using a Service or violation of data protection legislation), regardless of the form of action, whether in contract, tort, warranty, or strict liability; provided, however, that Customer will have no obligation to indemnify and defend COGENT against claims for bodily injury or death caused by COGENT's gross negligence or willful misconduct; or (c) from claims of copyright infringement and all manner of intellectual property claims, defamation claims, claims of publication of obscene,

indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, and claims of infringement of data protection legislation, to the extent such Losses are based upon (i) the content of any information transmitted by Customer or by any of Customer's customers or authorized end users, (ii) the use and/or publication of any and all communications or information transmitted by Customer or by any of Customer's customers or authorized end users, or (iii) the use of Service(s) by Customer in any manner inconsistent with the terms of this CSA, including without limitation the AUP.

7. **ADDITIONAL PROVISIONS:**

7.1. Except as to payment obligations of Customer, neither Party shall have any claim or right against the other Party for any failure of performance due to Force Majeure.

7.2. Neither Party is the agent or legal representative of the other Party, and this CSA does not create a partnership, joint venture or fiduciary relationship between COGENT and Customer. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This CSA confers no rights, remedies, or claims of any kind upon any third party, including, without limitation, Customer's subscribers or end-users.

7.3. This CSA for Service is made pursuant to and shall be construed and enforced in accordance with the laws of the District of Columbia without regard to its choice of law principles. Any action arising out of or related to this CSA shall be brought in the District or Federal courts located in the District of Columbia, and Customer consents to the jurisdiction and venue of such courts.

7.4. Notices, if required, must be sent in writing by e-mail, courier or first class mail (postage prepaid) to the appropriate contact point listed on the Order Form, and not considered made, when received at that address; provided, that termination notices to COGENT must be sent in accordance with Section 4.4 above. In the event of an emergency, COGENT may only be able to provide verbal notice first; such verbal notice will be followed by written notice. Customer is responsible for accuracy of its information on the Order Form, including points of contact.

7.5. Customer may not assign this CSA without COGENT's prior written consent, which consent shall not unreasonably be withheld. Any such assignment without COGENT's prior written consent shall be void.

7.6. Without limiting any other obligation which expressly survives the expiration or prior termination of the term of the CSA, the expiration or prior termination of the term of the CSA shall relieve both Parties of any further obligations hereunder, except with respect to the Sections 2.3, 4.2, 4.4 and 5 through 7, which shall survive any expiration or termination of these Terms.

7.7. If (but only if) required by COGENT's or Customer's agreement with Customer's Landlord: (a) any cessation or interruption in COGENT's Service does not constitute a default or constructive eviction by Customer's Landlord, and (b) Customer agrees to waive and release Landlord and its related parties from any liability in connection with any damages whatsoever incurred by Customer, including lost revenues, which arise, or are alleged to arise, out of any interruption of or defect in the COGENT Service, REGARDLESS OF WHETHER SUCH INTERRUPTION OR DEFECT IS CAUSED BY THE ORDINARY NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF A RELATED PARTY.

7.8. The COGENT Network is owned by COGENT, or its licensors, and is protected by copyright and other intellectual property laws. Customer agrees that title to and ownership of the Services, in any form, shall at all times and in any event be held exclusively by COGENT. Customer shall be entitled to only such rights with respect to the Services as are specifically granted herein.

7.9. This CSA and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Customer and COGENT and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated into this CSA.

7.10. This CSA and any Addendum thereto may be executed in one or more counterparts all of which taken together shall constitute one and the same instrument.

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DEFINITIONS

AUP

COGENT's Acceptable Use Policy as posted by COGENT (currently at <http://www.cogent.com/termsandconditions>)
COGENT reserves the rights reserved by AUP at any time, effective upon posting on the COGENT website.

COGENT

Cogent Communications, Inc. or its subsidiaries or affiliates.

COGENT Network

The telecommunications network and network capabilities owned, operated or controlled by COGENT, including COGENT's fiber backbone, metropolitan fiber networks, any equipment connected to such fiber, and the servers, hubs and routers used by COGENT to provide the Services. Where COGENT services a building through its own facilities, the COGENT Network includes those facilities. The COGENT Network does not include customer premises equipment, customer-ordered telephone circuits, and any servers or network equipment not operated and controlled by COGENT.

Customer

Customer identified in the attached Order Form.

CSA

The entire Customer Subscriber Agreement between COGENT and Customer, the provision of the Service, consisting of the Order Form, the Terms, the applicable product flyer and the SLA.

Equipment

Customer's equipment, if any.

Force Majeure

Causes beyond a Party's control, including but not limited to, acts of God, any explosion, vandalism, theft and strike, flood or other similar occurrence, any law, order, regulation, directive, action or request of any government, including federal, state, provincial, municipal and local governments claiming jurisdiction over a Party or the Service, or of any department, agency, commission, bureau, corporation, or other governmental or quasi-governmental or of any court of judicial authority, national emergency, unavailability of materials or supplies or any infrastructure, fire, terrorist act or acts (deindividually or strikes, lock-outs, work stoppages or other labor difficulties, supplier failures, shortages, freezes or delays.

Initial Costs

Charges of (a) installation fees (if not paid) or (b) all third-party costs and charges incurred by or charged to COGENT on behalf of Customer for the Service, including but not limited to local loop fees, cross-connect charges, and peering fees.

Initial Term

Initial length of term for the Service as indicated on the Order Form.

Leadtime

Customer's leadtime, including on-site or prearranged on-site manager.

Lapses

Costs, fees, liabilities, losses, damages or penalties, including reasonable legal fees.

Order Form

Cover form to which these Terms are attached, identifying the specific Service(s) to be delivered.

Party or Parties

COGENT and/or Customer.

Renewal Term

Subsequent length of term for the Service after completion of the Initial Term.

Service(s)

Bandwidth services provided by COGENT under the Customer-Subscriber Agreement.

Service Date

Earlier of date on which (a) COGENT deems that the Service is available for Customer's use or either the COGENT-designated demarcation point or last-possible test point; or (b) Customer first uses the Service on the COGENT Network.

SLA

The Service Level Agreement as posted by COGENT (currently at www.cogent.com/termsandconditions) for Customer's specific Service(s). COGENT reserves the right to amend the Service SLAs at any time, effective upon posting on the COGENT website.

Space

Rented rack space from COGENT, if any.

Tax or Taxes

All taxes arising in any jurisdiction, including without limitation all sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for local taxation customers), consumption, or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based on the provision, sale or use of the Service(s), including such taxes imposed directly on COGENT or for which COGENT is permitted to invoice Customer in connection with COGENT's performance under the CSA. Taxes do not include COGENT's ancillary charges.

Termination Charge

Single payment equal to any third-party termination charges and the total remaining dollar value of the applicable Service order through the Initial Term or Renewal Term, as applicable.

Terms

Terms and conditions that apply to the Service; COGENT provides to Customer.

Customer:



Product Rider - Dedicated Internet Access (Ver. 1-6)
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PRODUCT RIDER - DEDICATED INTERNET ACCESS GLOBAL

Optical Network

This product rider (Rider) amends the USA entered into between Customer and COGENT for the Services specified therein. Unless otherwise defined herein, capitalized or defined terms in the USA have the same meaning in this Rider. In the event of a conflict between forms, the following will be the order of priority: First, the Order Form; Second, this Rider; Third, the Terms; and Fourth, the SLA.

1. Service and Options

Within the scope of the Dedicated Internet Access Service, COGENT transmits IP packets between the COGENT Network and associated networks of its Customers as well as to and from the global Internet using COGENT's settlement-free peering agreements with other networks.

Subject to their availability, Customer may select one or more options associated with the Service such as listed in the Order Form, in which case Customer agrees to pay the related fees such as indicated in the Order Form.

MultiBGP: Customer may connect to COGENT's network with multiple BGP sessions over a single port, such BGP sessions being on its own assigned AS (the Primary ASN) and ASs from third parties represented by Customer (the Secondary ASNs). In this case, Customer will be required to provide COGENT with a Letter of Authorization ("LOA") issued by the third parties having registered the Secondary ASNs in order to activate such Service, and all interactions, being during provisioning or operations, related to BGP sessions set up between COGENT's network and Secondary ASNs will be handled exclusively between COGENT and Customer. The fact that a BGP session is being set up between COGENT and other parties represented by Customer does not constitute a contractual relationship between COGENT and the other parties, this interaction is ruled by the contractual relationship established between COGENT and the Customer. COGENT will charge an additional Monthly Fee for each Secondary ASN connected.

Peak Traffic Available for Non-Centric customers only: When the "Peak Traffic" Option is selected on the Order Form, Customer agrees that the Base Monthly Fee and Burst Fee set forth in the Order Form are discounted rates and that Customer's responsibility for these rates is contingent upon the ratio of Customer's Inbound Traffic Volume (traffic flowing from Cogent's network to Customer's network over the Service Interfaces) to Customer's Outbound Traffic Volume (traffic flowing from Customer's network to Cogent's network over the Service Interfaces) exceeding 1 (one) (the "Traffic Ratio") in each calendar month of Service. For any calendar month where the Traffic Ratio does not exceed 1 (one), (a) COGENT will assess, and Customer agrees to pay, an Overage Charge equal to the difference between the Standard Base Monthly Fee per Mbps set forth in the Order Form and the discounted Base Monthly Fee, and (b) the Burst Fee for any burstable usage (measured in Mbps) in such month shall be charged at the Standard Burst Fee per Mbps set forth in the Order Form, not the discounted Burst Fee per Mbps. Both the Overage Charge and the Burst Fee will appear on Customer's next invoice. For purposes of this option, "Traffic Volume" shall mean actual data transfer across the Service Interfaces, as measured by Cogent for each traffic direction, taking data transfer usage samples every 5 minutes throughout the month for each Service Interface (a sample is based upon the average bytes per second across the 5-minute segment multiplied by the 5-minute sample interval to come to the total number of bytes transferred in the segment) and adding up all samples per direction.

Equipment: COGENT may, at its sole discretion and if available, provide equipment for certain Services. The fees for such equipment as agreed in the Order Form will be added to Customer's invoice. COGENT does not guarantee and is not responsible for any specific type of equipment, or any equipment at all, to be made available to Customer, and such equipment will belong to Customer upon receipt. Customer will provide its own technical support to install, maintain, and integrate equipment. COGENT will not provide on-site technical support. Customer will be responsible for applicable replacement costs if the equipment is subject to any damage, unauthorized alteration/modification/repair, abnormal use, misuse, neglect, abuse, accident, improper installation, or other acts caused by Customer, its employees, contractors, or any other persons. Such action or inaction may void any manufacturer warranties. Customer further agrees to indemnify and hold harmless COGENT for any third party claim based on Customer's unauthorized alteration or modification of the equipment. COGENT is not responsible for Service disruptions caused by any request by Customer to relocate equipment.

Expedite Delivery: COGENT's installation guarantee is strictly limited to the installation guarantee stated in the SLA. However, Customer may request in the Order Form an expedite delivery for his Service. COGENT will use commercially reasonable efforts to accommodate Customer's request provided, however, that COGENT does not guarantee that any such request will be fulfilled (and any such guarantee given either orally or in writing are hereby disclaimed) nor does COGENT guarantee that the Service will be delivered on a specific date, such as the Requested Service Date indicated on the Order Form.

2. Burstable Service

If Customer is purchasing COGENT's burstable Service, Customer will have a minimum bandwidth commitment assigned for a given port (the Bandwidth Commitment or Committed Data Rate, "CDR"). The Bandwidth Commitment is agreed upon in the Order Form and is the minimum amount of bandwidth that will be charged to Customer each month at the base Service price, even if not fully used by Customer during a given month. Customer may burst up to the maximum bandwidth that can be carried on a given port, e.g. 1,024 Mbps for a Gig-Ethernet port, subject to availability of bandwidth within the COGENT network.

If Customer exceeds the Bandwidth Commitment on any burstable port in any given calendar month, Customer agrees to pay the additional per Mbps charge for excess bandwidth usage over the Bandwidth Commitment as indicated in the Order Form. Such extra bandwidth usage is calculated by COGENT as the difference between total bandwidth usage and Bandwidth Commitment, where total bandwidth usage is determined by collecting bandwidth usage samples every 5 minutes throughout the month for each port (a sample is based upon the average usage across the 5-minute segment) and determining the appropriate percentile (90th or 95th) of usage as indicated in the Order Form. Only one sample is captured for each 5-minute period, even though two samples are collected - one for inbound utilization and one for outbound utilization. The higher of the two samples is retained. For partial months, the total number of samples for the calendar month is used, for samples where there is no usage, 0 is the recognized value. For example, in a 30-day billing period, 3,600 samples are collected (12 samples/hour x 24 hours/day x 30 days) and the top 95th percentile billing, the highest 5% or 432 samples are discarded (representing the top 5% of usage levels). The highest remaining sample (sample 433 in this example) is used to determine the total bandwidth usage. For 90th percentile billing, the highest 10% or 360 samples are discarded (representing the top 10% of usage levels). The highest remaining sample (sample 365 in this example) is used to determine total bandwidth usage.

Under the "Standard Burst Billing" option available in conjunction with 90th percentile burst billing, COGENT calculates excess usage as the difference between the sum of total bandwidth usage and the sum of Bandwidth Commitment across all installed ports. For example, if Standard Burst Billing is applied over three ports with a Bandwidth Commitment of 200 Mbps on each (i.e., a total Bandwidth Commitment of 600 Mbps) and the individual 90th percentile total bandwidth usage amounts were 70 Mbps, 150 Mbps and 500 Mbps, the excess bandwidth usage would be 120 Mbps (70 + 150 + 500 - 600).

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Under the "Aggregate Burst Billing" option available in conjunction with 95th percentile burst billing, excess bandwidth usage is calculated by COGENT as the difference between total aggregated bandwidth usage and the sum of Bandwidth Commitment across all aggregated ports, where total aggregated bandwidth usage is determined by adding usage samples every 5 minutes across all aggregated ports. For example, if there are three aggregated ports, every 5 minutes three inbound samples and three outbound samples are collected, added up to one bandwidth usage value per direction, and the higher of the two values is retained. In a 30-day billing period, the final 3,640 retained bandwidth usage values reflect the aggregated usage across all ports. These values are listed from highest to lowest. The highest 5% or 432 values are discarded (representing the top 5% of usage levels). The highest remaining value (value 433 in this example) is used to determine total aggregated bandwidth usage.

Under both "Summed Burst Billing" and "Aggregate Burst Billing" options, a Master Service is defined in the Order Form, and all other Services involved in a Summed or Aggregate calculation are listed. Excess bandwidth usage (burst usage) calculated across the listed ports will be billed on the Master Service account. The relevant data (additional per Mbps charge for excess bandwidth usage and Billing Currency) pertaining to the Master Service will be used for calculating excess bandwidth usage fees across Master Service and all other involved Services. For example, if a customer orders ports in the UK, US, and Canada and defines the US port as the Master, all excess bandwidth usage will be billed on the US invoice in US dollars, at the burst fee indicated on the US port order form.

3. Customer's Duties in Connection

Customer or its representative must cooperate with COGENT in the installation process, which includes a complete completion of an Order Form containing detailed demarcation information and other onsite contact listings, and of the necessary technical questionnaires (IP Questionnaire, BGP Questionnaire, etc.) as provided by COGENT. Customer or its representative must be physically present at the time of installation. During installation and at all other times, the Customer will allow access, and if necessary provide escort, for COGENT's or its representative's necessary personnel to perform the installation and maintenance of the Service, to the designated building's phone closet(s) or telecommunications room or to the Customer's premises for the purposes of survey, installation, operations and maintenance of the Service, after prior arrangement between the parties. Customer's failure to cooperate shall release COGENT from its obligations pertaining to the Installation Guarantee included in the SLA but shall not suspend the Service Date or billing start date.

In the event of technical problems relating to the Service, the Customer will ensure that COGENT's or its representatives' service engineers have unrestricted access to the designated building's phone closet(s) or telecommunications room or to the customer premises equipment. Customer's failure to provide access shall release COGENT from its obligations pertaining to the Network Availability part of the SLA.

4. Demarcation Point

Within a COGENT data center: If Service delivery takes place within a COGENT data center, COGENT will deliver the Service at a demarcation point situated on the COGENT equipment. COGENT will provide, maintain and operate the necessary wiring ("Cross-Connect") for Customer to connect to COGENT's services at the indicated demarcation point. COGENT will provide such Cross-Connect for the fee set forth on the Order Form.

Within a third-party data center: If Service delivery takes place within a third party data center (i.e. that is not owned and/or operated by COGENT), COGENT will deliver the Service at a demarcation point situated on the COGENT equipment. Unless otherwise agreed, Customer will at its own cost provide, maintain and operate the necessary wiring ("Cross-Connect") to connect to COGENT's services at the indicated demarcation point. If Customer and COGENT agree that COGENT shall provide such Cross-Connect, then COGENT will provide such Cross-Connect against fees such as indicated on the Order Form and the Service demarcation point will remain on the COGENT equipment.

Within an On-Net corporate building: If Service delivery takes place within an On-Net corporate building, COGENT will deliver the Service at a demarcation point situated on the COGENT equipment within the Customer's suite. COGENT will provide, maintain and operate the necessary wiring ("Riser") between the building entry and the indicated demarcation point.

At an Off-Net Customer Location: Off-Net Services are being delivered to the Customer Location indicated in the Order Form through a third-party local loop to be provisioned by COGENT on behalf of Customer. As such, the Customer and COGENT agree that the charges set forth in the Order Form for such Service assumes that such Service will be terminated at a pre-established demarcation point or minimum point of entry (MPOE) in the building housing the Customer Location, as determined by the local access provider. COGENT may charge Customer additional non-recurring charges not otherwise set forth herein for such Service where the Customer or local access provider determines that it is necessary to extend the demarcation point or MPOE through the provision of additional infrastructure, cabling, electronics or other materials necessary to reach the Customer Location. It shall be the Customer's responsibility to allow access to the facility for the local access provider, as well as to facilitate or coordinate with the property owner at the Customer Location, all additional space and electricity determined by the local access provider to be necessary to provide the Service. COGENT will notify Customer of any additional non-recurring charges, if any, as soon as practicable after COGENT is notified by the local access provider of the amount of such charges. From time to time, COGENT may provide, and Customer may accept, budgetary estimates for the extension of the demarcation point to the Customer Location along with the initial Order Form. These estimated costs may be based on certain known costs or typical installations that do not require extraordinary efforts by the provider to extend the service. In the event actual costs exceed the budgetary estimate, Cogent will notify the Customer as outlined above.

In addition, the charges and the Terms set forth in the Order Form for the Service assume that such Service can be provisioned by COGENT through the local access provider selected by COGENT (and/or Customer) for the stated Term. In the event COGENT is unable to provision such Service through the selected local access provider or the selected local access provider requires a higher cost or longer Service Term than that set forth in the Order Form, COGENT reserves the right, regardless of whether COGENT has accepted the Order Form, to suspend provisioning of the Service hereunder and notify Customer in writing of any additional non-recurring charges, monthly recurring charges, and/or Term that may apply, or to cancel the Service set forth on the Order Form. Upon receipt of such notice, Customer will have five (5) business days to accept or reject such changes. If Customer does not respond to COGENT within the five (5) business day period, such changes will be deemed rejected by Customer. In the event Customer rejects the changes (whether affirmatively or through the expiration of the five (5) business day period) or if COGENT elects to cancel the Service ordered herein, the affected Service will be cancelled without cancellation or termination liability of either party.

Accepted and agreed to:

CUSTOMER: [Signature]
By: _____

COGENT COMMUNICATIONS
By: _____

Title: President/CEO
Date: 7/11/13

Title: _____
Date: _____



Colocation & Dedicated Internet Access

Cogent Communications, Inc.
1015 31st Street
Washington, DC 20007

Optical Internet

Customer Order Form

North America

www.cogentco.com

Customer and Order Information

Customer Name	Pac West Telecom		
Customer Description	Access / ISP (CLEC)	Resell Customer Name	No N/A
Order Date	26-Mar-2008	Requested Service Date	1-May-2008
Order Type	New	Agent Deal (Name)	No N/A
Legacy Order Number(s)			

Service Information

Product Type	Colocation Only	Quoted Currency	USD US Dollars
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Colocation - Service Parameters

1-11981517
1-11981536

Order Number	Cogent Node Id	Product	Product Items	Initial Term	Installation Fee	Monthly Fee
				Months	USD	USD
1-11981517	31029-1	Suite / Cage	2500 Sq Ft US Standard (19'x39')	2yr	N/A	8,200
1-11981536		Power	US Standard (AC 110V/20A)	2yr	N/A	See Addendum
		Cabling	XCONN Fiber			
			XCONN Fiber			
			A-End (Order #) Z-End (Order#/Telco Demarc)			

Dedicated Internet Access - Service Parameters

Order Number	Cogent Node Id	Service Interface	Bandwidth CDR Mbps	Billing Model	Initial Term	Burst Fee (per Mbps)	Installation Fee	Base Monthly Fee
						Months	USD	USD

Options

Order Number	Description	Comments	Option Selected	Installation Fee	Monthly Fee
				USD	USD
	DC Power	Redundant 400A feeds to BDFB in customers 210 Suite	Yes		
	AC UPS Feeds	One 350 & one 200 Amp feed to panels U2 & U5 in customer Suites	Yes		
	Expedite Delivery	As described in Product Rider	No		
	Billing Options	As described in Product Rider	No		
	UPS Power	As described in Product Rider	No		

Total Fees

Total Fees	Installation Fee	Monthly Fee
		USD
Total Fees including Options <small>(Note: Burst Monthly Fees may be charged in addition as defined in the attached Product Rider)</small>	0	8,200



*If Customer has elected to be billed in a currency other than the currency used for the Order (i.e., the Quoted Price will be converted into the Billing Currency indicated above on the date this Order is submitted by COSENT. In performing the currency conversion on each day, COSENT will use the currency conversion rate as of the close of business for the applicable day as set forth at www.fishbase.org.

Billing Currency*	USD	US Dollars
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Initials Customer:



Colocation & Dedicated Internet Access

Cogent Communications, Inc.
1015 31st Street
Washington, DC 20007

Optical Internet

Customer Order Form

North America

www.cogentco.com

Customer Service Delivery Information

Company Name	Pac West Telecom
Cogent Node ID	21029-1
Service Address	1624 Franklin
Suite / Floor	2nd floor, Suites 210, 212 and 214
City, State, Province	Oakland CA
Postal Code	94612-2811
Country	USA

* Service delivery always takes place at Cogent Demarcation Point as defined in the attached Product Rider.

Delivery Contact Name	Michael Hawn
Telephone	209 926 3337
Cellphone	209 639 2442
Fax	
Email	mike.hawn@pacwest.com

Customer Contracting & Billing Information

Company Name	Pac West Telecom
Billing Address	4210 Colorado Avenue
Suite / Floor	
City, State, Province	Stockton, CA
Postal Code	95204
Country	USA
Company Registr. Nr.	
Tax / VAT ID Number	
Billing Contact Name	William Wardynski
Telephone	209.926.3153
Cellphone	209.401.8043
Fax	
Email	wardynski@cogentco.com

Cogent Contact Information

Sales Office	Location	Harmon, VA (Retention)
	Address	HC: 1015 31st Street Washington, DC 20007
	Phone	866-774-8183
	Fax	703-836-8783
Service Provisioning		sd@cogentco.com
Customer Care		support@cogentco.com

Sales Account Manager	Name	Judith A. Ferrera
	Phone	703-458-7678
	Email	judith.ferrera@cogentco.com
Sales		sales@cogentco.com
Billing		billing@cogentco.com
Termination		term@cogentco.com

Contract Documents

The entire Customer Subscriber Agreement (CSA), entered into between Customer and COGENT, is made up of the documents listed herein. Capitalized terms are defined in the text of the Terms or Definition section of the Terms. All prior agreements, proposals, representations, statements or understandings, whether written or oral, concerning such Services, are superseded. Customer certifies that the documents constituting the CSA are the documents and forms that have been supplied to Customer by Cogent and that Customer has made no changes to them.

- (1) the Order Form
- (2) the Terms & Conditions attached (Initiated by Customer)
- (3) the SLA: http://www.cogentco.com/usa/psa_internet/SLA_on_Internet.pdf
- (4) the Product Rider(s) attached (signed by Customer)
- (5) Any other Rider or Addendum attached (signed by Customer)

Notes

POWER: The recurring cost of power will be billed in accordance with the Address on CAGE. MRC is calculated using cage space that is non-standard, totaling 2500 sq. ft. Suite 210, 212 and 214 on second floor.
Pac-West may use courtesy wall AC Outlets (non-UPS) in customer space as part of power charge. To be used only for internet tests, maintenance or clearing.
Fire Suppression system, generator, UPS, HVAC, redfish will be maintained by Cogent as part of the service.
Pac-West and Cogent will develop a transition plan for monitoring of environmental systems for the site.
Cogent recognizes that Pac-West has corrective services at this location and will exercise reasonable care to ensure there is not a disruption in service.

Signatures

CUSTOMER AGREEMENT: Signature of the Order Form indicates Customer's acceptance of the entire Customer Subscriber Agreement

For Customer
Name: Michael B Hawn
Title: VP Engineering Mktg Ops

For Cogent Communications, Inc.
Name: [Signature]
Title: CEO

Date 4/30/08
Signature [Handwritten Signature]

Date 5/20/08
Approval Signature [Handwritten Signature]

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COMMUNICATIONS

**NETWORK SERVICES
ADDENDUM – COLO
NORTH AMERICA**

OPTICAL INTERCONNECT

This addendum (Addendum) amends the CSA entered into between Customer and COGENT for the Services specified herein. Unless otherwise defined herein, capitalized or defined terms in this Addendum shall have the same meaning in this Addendum. In the event of a conflict between terms, the following will be the order of priority: First, the Order Form; Second, this Addendum; Third, the Terms; and Fourth, the SLA.

1. **Services.** The Terms of this CSA, as attached, are amended by this Addendum in regards to Customer's purchase of co-location services from COGENT.
2. **DEPLOYMENT AND SET-UP.** Except for COGENT's assistance in identifying the Space and applicable rack(s), Customer, at its own expense, is solely responsible for itself, or its third party agents, to order, deliver, unpack, and install the Equipment for use in the Space. Customer is required to provide COGENT with at least 72-hour notice of the expected delivery and installation date.
3. **ACCESS/SET-UP/ACCESS.** Under this Agreement, COGENT grants Customer a non-exclusive license to install, operate, maintain and access the equipment in the Space as of the Service Date. COGENT reserves all rights not specifically granted to Customer under such license, including the right to access the Space in emergency situations.
4. **ACCESS/SECURITY.** Customer can authorize up to twenty (20) individuals to access the Space, subject to this Agreement. Authorized representative includes customer employees/contractors and customer's co-location customer. Authorized representatives may need to be accompanied. Such escorting may result in standard escort charges. Customer's authorized representatives found in unauthorized areas may have access rights suspended or terminated. COGENT may suspend or terminate Customer's access to the Space if Customer is in default of its obligations under the CSA, including its obligation to pay Service charges when due. COGENT shall not provide or guarantee any data back-up or data storage of Customer's Equipment or content.
5. **POWER.** COGENT shall provide Customer with ports or if and as specified on Customer's Order Form, at the rate specified on the Order Form. Notwithstanding the foregoing, COGENT may increase power pricing to the extent utility rates (or rates charged by landlords supplying power) are increased for such power. If no ports or is specified on the Order Form, then COGENT shall have no obligation to provide power to Customer's Space. COGENT shall not be liable if Customer, by action of Customer's personnel or by Cogent's personnel at the request of Customer, causes the tripping of an electrical circuit, power strip, and/or circuit breaker.
6. **RISK OF LOSS.** Customer shall at all times before, during and after the term of this Agreement bear the entire risk of loss, damage, or destruction of the Equipment or any part thereof, from any and every cause whatsoever.
7. **INCORRECT USE.** No food or drink, or hazardous material shall be brought into any COGENT data center. Any photo equipment, video or voice recording equipment must be configured in a fashion that only the customer's space can be monitored. Use of such items may result in suspension, or termination of access rights. Customer shall not take any action or allow any use which in the opinion of COGENT causes or is likely to cause damage or constitutes a nuisance or annoyance to the facility, equipment, personnel, or other customers. Customer shall at all times abide by COGENT's Access Policy located at <http://www.cogent.com/DataCenter/526A22089530D91816216326A0A782AC2658656> which may be modified from time to time. Any modification of the Access Policy will be effective upon posting at website referenced above.
8. **DESTRUCTION OF EQUIPMENT.** In the event of an emergency, that presents a substantial risk of a service outage, or damages to equipment or data belonging to COGENT's third party, the data center, or any persons or property present therein, COGENT may remove Customer's Equipment (with the items rent paid by COGENT for returning its own equipment) as it is reasonably necessary to respond to the emergency; and only as necessary, COGENT may disconnect Equipment if the emergency requires such disconnection to avoid damage. COGENT shall use commercially reasonable means to notify Customer prior to removing the Equipment or disconnecting the Equipment, and in any case will notify Customer thereafter. COGENT will return the Equipment to the original Space (if rearranged) or re-connect the Equipment as soon as reasonably practicable given the emergency.
9. **RELOCATION OF EQUIPMENT.** If Customer requests relocation of the Equipment to another part of the Data Center outside of customer's data, such relocation must be approved by COGENT and performed by Customer or its agent at Customer's own expense. COGENT is not responsible for network access disruptions caused by Equipment relocation requirements. Further, should Customer request additional co-location Space after the initial order, and should Customer require that the original Space ordered and the new Space order be contiguously located (i.e., the two Spaces are next to each other), Customer may be required to move Equipment to a different location within the Data Center, at Customer's own expense.
10. **REMOVAL OF EQUIPMENT.** Except as provided below, Customer must remove all items of Equipment located in the Space within ten (10) days of the date of termination of this Agreement. Equipment includes only the customer owned equipment and does not include rack, inter-connector cables or connector equipment. In the event the Equipment is not removed, such Equipment will be considered abandoned, and COGENT may, without liability to Customer, remove the Equipment and charge Customer for such removal storage costs, plus any past due Service charges. Acknowledging that COGENT is providing Services in expectation of payment, in the event of Customer's failure to pay an invoice when due, or following any termination for non-payment of Service charges, COGENT may deny Customer access to the Space and hold the Equipment until all second and third amounts are paid in full or at COGENT's sole option, remove and dispose of the Equipment itself, at Customer's expense, and without liability for any related damages. If payment of amounts owed is not made within a thirty (30) day period and COGENT has not elected to remove the Equipment, COGENT may exercise all rights of ownership over such Equipment.

COGENT:
Customer: 

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11. **COGENT HELPING HANDS.** COGENT provides, on the limited basis set forth herein, Helping Hands events in the Herndon and Marina Del Rey Data Center locations. Helping Hands events are limited to (1) power cycling of Customer's Equipment and (2) backup tape rotation. COGENT will provide six (6) Helping Hands events per calendar month at no charge. Any additional Helping Hands events in a calendar month will be billed at \$100/hour (to be billed in 30 minute increments, e.g., 40 minutes will be charged at \$100). Customer agrees that COGENT is not responsible for any loss or damage to property of any kind owned or leased by you or your employees, servants, and agents, including but not limited to the Equipment affected during any Helping Hands process performed hereunder, regardless of cause. Customer agrees to indemnify and hold harmless COGENT from any claims of loss or damage resulting from any Helping Hands events performed by COGENT on Customer's Equipment. Additional assistance beyond the scope of Helping Hands events may be performed by COGENT on a case-by-case basis only if requested by you and agreed to in writing by COGENT's Director of Data Center Operations. Such assistance will be at a cost to be agreed upon in advance by Customer and COGENT.

12. **SUB-LEASE.** Customer shall have the right to sub-lease the Space only in accordance with the terms of the CSA and this Addendum; any sub-lease in violation of the terms of the CSA shall be void. In the event Customer sub-leases all or a portion of the Space (a) Customer remains responsible to COGENT for all of its obligations hereunder including but not limited to all charges and liabilities arising out of or related to such third party usage, sites, communications, and the acts and omissions of such sub-lessees, (b) Customer shall indemnify COGENT for any third party claims arising out of the acts and omissions of such sub-lessees, (c) Customer and the party(s) to whom Customer sub-leases any portion of the Space shall enter into written agreement(s) pursuant to which such party(s) agree to be bound by all terms and conditions in this CSA as applicable to them and their use of the Space, including, without limitation, Cogent's rights with respect to Equipment located in the Space, and (d) any agreement between Customer and a sub-lessee shall provide that such sub-lessee shall terminate automatically upon expiration or termination of this Agreement. Notwithstanding the foregoing, COGENT is not liable to any third-party sub-lessees for any claims, losses or damages (including consequential damages) resulting from that customer's use of the Space. No sub-lessee shall have an independent right of access to the Space; any sub-lessees shall access the Space only when accompanied by authorized personnel of the Customer.

13. **INSURANCE.** Customer shall provide proof of insurance prior to installation of Equipment in the Space and maintain such insurance at all times during the Initial Term and any Renewal Term of this Agreement and during any two-day removal period of the Equipment. Proof of insurance shall be provided by delivery of certificates of insurance to COGENT showing the following types of insurance, in the following minimum amounts, which insurance shall be issued by companies which have a Best's Key Rating of at least A-:

- a. Worker's compensation insurance complying with the law of the state in which each Space used by Customer is situated, regardless of whether Customer is required by such law to maintain worker's compensation insurance, and employer's liability insurance with the limit of \$1 million per;
- b. Occurrence form commercial general liability insurance including coverage for personal injury, bodily injury, death, contractual liability and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Customer's operations, in the amount not less than \$1 million combined single limit per occurrence;
- c. Standard form property insurance insuring against the perils of fire, vandalism, and malicious mischief extended coverage (all risk) covering Equipment located in the Space in an amount not less than its full replacement value;
- d. Professional liability insurance (including Multimedia Errors and Omissions insurance) including coverage for losses attributable to damage, destruction, and/or fraudulent modification of electronic data; and
- e. Excess or umbrella liability coverage with a combined single limit of \$1 million per occurrence to be excess of (a) and (b).

COGENT and its landlord for each Data Center shall not insure or be responsible for any loss or damage to property of any kind owned or leased by Customer or its employees, servants, and agents, including but not limited to the Equipment. The maintenance of insurances by Customer shall not affect or limit the extent of Customer's liability under this Agreement.

COGENT, except in the case of worker's compensation insurance, shall be named as an additional insured on the policies required above. The certificates of insurance shall show that the insurance is proper, and in full force and effect and that such insurance shall not be canceled, non-renewed or decreased, during the Initial Term or any Renewal Term of the Agreement or during any two-day removal period, without at least thirty (30) days written notice to COGENT. Any insurance policy covering the Equipment against loss or physical damage shall provide that such insurance shall be primary and noncontributing with any other insurance available to COGENT.

14. **Operating Requirements.** The Equipment installed by Customer in the Space (for purposes of these requirements, one rack shall be considered the equivalent of 20 square feet) shall meet the following requirements (exceptions granted for conditions that exist, if any, at initial service date):

- Power supply use shall not exceed 100 watts per square foot of occupied Space; and
- Floor load shall not exceed 25 pounds per square ft of occupied Space.

Accepted and agreed to:

CUSTOMER: [Signature]
By: Michael B. Hyam
Title: VP Engineering/Network Ops
Date: 4/30/08

COGENT COMMUNICATIONS, INC.
By: [Signature]
Title: CEO
Date: 5/20/08

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**NETWORK SERVICES
ADDENDUM
NORTH AMERICA**

This addendum (Addendum) amends the CSA entered into between Customer and COGENT for the Services specified therein. Unless otherwise defined herein, capitalized or defined terms in the CSA have the same meaning in this Addendum. In the event of a conflict between forms, the following will be the order of priority: First, this Addendum; Second, the Order Form; Third, the Terms; and Fourth, the SLA.

Customer and COGENT acknowledge that COGENT is entering into a lease for the Service Location contemporaneously with this CSA (the "Lease"). In the event COGENT's base rent and/or Operating Charges under the Lease are increased at any point during the Term, Customer's monthly recurring charges for the Service ("MRC"), as set forth on the Order Form, shall be increased by the product of (i) the percentage increase in COGENT's base rent and Operating Charges and (ii) the MRC for the Service in effect immediately prior to the increase. "Operating Charges" shall mean all costs and expenses charged to COGENT by the landlord under the Lease other than base rent. The increase in the MRC shall apply to the cage space in Shifter 210, 212 and 214 at the Service Location and the increase in the MRC shall be effective upon at the same time as the underlying COGENT's base rent and/or Operating Charges takes effect. COGENT shall notify Customer of such increases through an updated invoice with the increased MRC. In the event COGENT is required by its landlord for the Service Location to make any true-up payments to cover Operating Charges, COGENT shall invoice Customer for its proportionate share of such true-up payment.

Power charges for the Services shall be calculated based on COGENT's good-faith estimate of Customer's kilowatt hour usage each month (which estimate shall include power attributable to the HVAC systems at the Service Location). The amount charged to Customer each month (or portion thereof) shall be determined by multiplying the total amount charged by PG&E (including all taxes and surcharges) by a fraction the numerator of which is COGENT's good faith estimate of the number of kilowatt hours used by Customer and the denominator of which is the total number of kilowatt hours shown on the PG&E bill. The parties agree that all electrical use that is not directly attributable to COGENT or another COGENT customer shall be included in Customer's usage for each month. Customer further agrees Customer will pay an additional amount each month equal to 15% of its electricity charge in respect of the generator and UPS. If any tax is imposed upon COGENT's receipts from the sale or resale of electrical energy to Customer by any federal, state, city or local authority, the pro-rata share of such tax allocable to the electrical energy services received by Customer shall be passed on to and paid by Customer if and to the extent permitted by law. COGENT will use commercially reasonable efforts to restore power to Pac-West in the event of an outage and to repair HVAC equipment or other common equipment in the event of equipment malfunction.

Accepted and agreed to:

CUSTOMER: [Signature]
By: Michael B. Hearn
Title: VP Engineering - Network Ops
Date: 4/20/08

COGENT COMMUNICATIONS, INC.
By: [Signature]
Title: CRO
Date: 5/20/08

Name - Date

B6F (Official Form 6F) (12/07) - Cont.
In re **UPH Holdings, Inc.**

Case No **13-10570**

Debtor(s)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See Instructions above.)</i>	C O D E B T O R	Husband, Wife, Joint, or Community		C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					
ACCOUNT NO.							
CENTURYLINK PO BOX 2961 PHOENIX, AZ 85062-2961		N A	Trade debt				392,775.00
ACCOUNT NO.							
CHARLES R. SIMPSON 6900 MEADOW CREEK NORTH RICHLAND HILLS, TX 76180		N A	Trade debt				16,667.00
ACCOUNT NO.							
CHUBB FIRE & SECURITY, INC P.O. BOX 749757 LOS ANGELES, CA 90074-9757		N A	Trade debt				16,682.90
ACCOUNT NO.							
COGENT COMMUNICATIONS PO BOX 791087 BALTIMORE, MD 21279-1087		N A	Trade debt				326,886.00
ACCOUNT NO.							
COMP-UTILITY CORPORATION 7720 WALDON DRIVE AUSTIN, TX 78750		N A	Trade debt				0.00
ACCOUNT NO.							
COMPASS GLOBAL 7720 WALDON DRIVE AUSTIN, TX 78750		N A	Trade debt				471.23



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

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

DEBTORS. § CHAPTER 11

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

6500 RIVER PL. BLVD., BLDG. 2, # 200 AUSTIN, TEXAS 78730 § JOINTLY ADMINISTERED UNDER CASE NO. 13-10570

DEBTORS' SECOND OMNIBUS MOTION FOR ORDER APPROVING REJECTION OF UNEXPIRED CONTRACTS AND LEASES NUNC PRO TUNC TO PETITION DATE

TO THE UNITED STATES BANKRUPTCY JUDGE:

PARTIES RECEIVING THIS OMNIBUS MOTION SHOULD LOCATE THEIR NAMES AND THEIR CONTRACTS OR LEASES AND OTHER AGREEMENTS IN THE ATTACHED EXHIBIT A.

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 Second Omnibus Motion for Order Approving the Rejection of Unexpired



Contracts & Leases *Nunc Pro Tunc* to Petition Date (defined herein) (the "Motion") pursuant to 11 U.S.C. § 365(a) and Rule 6006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"). A hearing will be held on the Motion before the Honorable Tony M. Davis, United States Bankruptcy Judge, United States Bankruptcy Court for the Western District of Texas, Austin Division, on **May 9, 2013, at 1:30 p.m. (CT)**. Any objections or responses to the relief requested herein should be filed on or before **May 2, 2013** with the Bankruptcy Court. 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)(A) and (O). The relief requested in this Motion is sought pursuant to 11 U.S.C. § 365(a).

II. FACTUAL BACKGROUND

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

3. A 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, which is incorporated herein by reference.

4. 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 brief background of each of the Debtors follows:

A. **Corporate Organization**

i. **UPH Holdings, Inc.**

5. UPH Holdings, Inc. ("UPH") is a Delaware corporation headquartered in Austin, Texas. UPH is a privately held, non-operating holding company with investments in UniPoint Holdings and Pac-West, and indirect investments in subsidiaries of those two companies. UPH does not currently hold any authorizations to provide telecommunications services. UPH was formed to hold the stock of Unipoint Holdings, and its subsidiaries, Peering Partners, and nWire. UPH then acquired the stock in Pac-West pursuant to a Merger Agreement dated September 7, 2011. As a result of these various transactions and the Pac-West Merger Agreement, UPH is now the holding company for UniPoint Holdings, Inc. and Pac-West Telecomm, Inc. All other Debtors are subsidiaries of either UniPoint Holdings, Inc. or Pac-West Telecomm, Inc.

ii. **UniPoint Holdings, Inc.**

6. UniPoint Holdings, Inc., a Delaware corporation, ("UniPoint Holdings") provides enhanced product and service offering to meet the needs of rapidly evolving communications world, primarily in the wholesale arena. Products and services offered by UniPoint Holdings include: business and residential communications services, IP peering, unbundled VoIP network elements, direct Internet access, virtual private networks, virtual network elements, origination, termination, toll-free, and other cloud-based services. UniPoint Holdings was formed in 2001 to acquire the assets of PointOne Communications, Inc. and its various subsidiaries out of the chapter 11 reorganization case, *In re PointOne Communications, Inc.*, in the United States Bankruptcy Court for the Western District of Texas, Case No. 01-12978-FRM.

iii. **Pac-West Telecomm, Inc.**

7. Pac-West Telecomm, Inc., a California corporation ("Pac-West"), provides advanced telecommunications and data services, enabling traditional and next-generation carriers to efficiently

design, deploy, and deliver integrated communications solutions. Pac-West offers origination, termination, managed modem, co-location, database, and transport services. Pac-West currently operates as a competitive local exchange carrier ("CLEC") and holds a certificate of public convenience and necessity ("CPCN") in California, Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. Pac-West is also certified as a competitive carrier in the District of Columbia. Pac-West currently offers all forms of telecommunications, including: local and long distance origination and termination; switched and special access; 8YY originating access and 8YY services; managed modem; and collocation services.

iv. Peering Partners Communications Holdings, LLC

8. Peering Partners Communications Holdings, LLC, ("Peering Partners") is a Texas LLC, qualified to do business in the State of Nevada. Peering Partners was formed for the purposes of acquiring the carrier services division of CommPartners Holding Corporation ("CommPartners")¹ that provides wholesale origination and termination services to other carriers throughout the United States. Peering Partners has contracts with either enhanced service providers ("ESP's), who generate IP-based traffic, or other carriers who, in turn, have contracted with ESPs, who generate IP-based traffic, to have the traffic carried across Peering Partners' network, convert the traffic to TDM, and hand it off to the terminating carrier. Peering Partners operates in a highly competitive and price-sensitive segment.

¹ The acquisition of the CommPartners Carrier Services division closed on December 23, 2010, and was approved in *In re CommPartners Holding Corporation*, Case No. BK-S-10-20932-LBR; in the United States Bankruptcy Court for the District of Nevada.

v. **nWire LLC**

9. nWire LLC (“nWire”), a Texas LLC, is a facilities-based CLEC certified to provide services in Texas, Arkansas, and Oklahoma.

vi. **UniPoint Services, Inc.**

10. UniPoint Services, Inc. (“UniPoint Services”) is a Texas corporation that buys and sells unbundled network communications elements.

vii. **UniPoint Enhanced Services, Inc.**

11. UniPoint Enhanced Services, Inc. (“UniPoint Enhanced Services”) is a Texas corporation that provides enhanced services.

viii. **Tex-Link Communications, Inc.**

12. Tex-Link Communications, Inc. (“Tex-Link”) is a telecommunications company that provides customized voice and data services to small- and medium-sized businesses through a facilities-based local exchange and inter-exchange network.

B. Events Leading up to the Petition Date

13. Following the merger with PacWest, the Debtors have struggled to retire overhang debt predating the merger. In addition, carrier services and other wholesale services are subject to increasing downward price pressures that will only increase given recent regulatory pronouncements. In addition, the Ninth Circuit recently reversed the ruling of the California Public Utilities Commission (“PUC”) concerning certain CLEC-to-CLEC state access tariff charges that Pac-West had been awarded from Comcast Phone of California and other California CLECs.² This reversal will also potentially affect access tariffs collected in other states. Economically, this ruling means that access tariffs paid to Pac-West five to ten years ago will now have to be refunded to various sister CLECs. Further, although the CLECs are owed the refund, those same CLECs and various affiliates owe the

² AT&T Communications of California, Inc. v. Pac-West Telecomm, Inc., 651 F.3d 980 (9th Cir. 2011).

Debtors a roughly equal amount, but refuse to offset these sums and are now threatening disconnection of services to the Debtors or other collection remedies.

14. To avoid the loss of any of its network facilities or functionality, the Debtors determined to initiate these proceedings to maximize the value of the estate for the benefit of all creditors, to provide a forum for resolution of the offsetting accounts, and to treat each of the Debtors' creditors *pari passu*.

15. Although the Debtors continue to struggle with overhang debt and the Ninth Circuit reversal, recent regulatory rulings will provide the necessary certainty that has eluded competitive exchange carriers, enhanced service providers, and VoIP networks for nearly two decades. Without the burden of overhang debt and secured debt service, the Debtors have positive cash flow and anticipate additional revenue growth.

16. 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' desire to reject various executory contracts that are burdensome to their estates.

III. RELIEF REQUESTED

17. Pursuant to this Motion, Debtors seek an order, pursuant to Bankruptcy Code § 365(a) and Bankruptcy Rule 6006, from the Court approving the rejection of certain unexpired contracts and leases (the "Contracts & Leases") identified in Exhibit "A." The Debtors request that the rejection of the Contracts & Leases be authorized *nunc pro tunc* to the Petition Date. A list of the Contracts & Leases subject to this Motion is attached hereto as Exhibit "A." The Debtors entered into the Contracts & Leases with the parties identified in Exhibit "A." The Debtors will provide copies of the

Contracts & Leases upon the request of any interested party in this matter as the documents are voluminous and production other than on request would be burdensome and expensive.

18. The Debtors also request that the deadline for filing an objection or other response to this Motion be filed on or before May 2, 2013 with the Bankruptcy Court.

19. Pursuant to section 365(a) of the Bankruptcy Code, the Debtors may, subject to Court approval, reject unexpired leases and executory contracts. The Bankruptcy Code does not provide a standard for determining when a debtor's rejection of an executory contract is appropriate. *See In re Monarch Tool & Manufacturing Co.*, 114 B.R. 134 (Bankr. S.D. Ohio 1990). Bankruptcy courts, however, generally acknowledge that the business judgment standard should be applied to determine whether to authorize the rejection of executory contracts and unexpired leases. *See In re Liljeberg Enters., Inc.*, 304 F.3d 410, 438 (5th Cir. 2002); *In re Pilgrim's Pride Corp.*, 403 B.R. 413 (Bankr. N.D. Tex. 2009); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36 (3d Cir. 1989). Notably, the burden or hardship on the non-debtor party to a rejected contract is not a factor to be considered. *See Borman's, Inc. v. Allied Supermarkets, Inc.*, 706 F.2d 187, 189 (6th Cir. 1983).

20. In addition, bankruptcy courts are empowered to authorize retroactive rejection of an executory contract or unexpired lease under § 365(a) of the Bankruptcy Code if the equities favor retroactive rejection. *See, e.g., Thinking Machines Corp. v. Mellon Financial Services Corp #1 (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995); *Stonebriar Mall Ltd. P'ship v. CCI Wireless, LLC (In re CCI Wireless, LLC)*, 297 B.R. 133, 138 (D. Colo. 2003).

21. As stated above, after careful review and due deliberation, the Debtors have determined in their business judgment that the Contracts & Leases are unnecessary to the continued operation of the Debtors' businesses, have no value to the Debtors' estates, and should be rejected. As a

consequence, the Contracts & Leases are no longer of use to the Debtors. Moreover, the Contracts & Leases have terms that are burdensome on the Debtors and have no residual value for the Debtors. Additionally, because the failure to reject these Contracts & Leases could result in the incurrence of unnecessary expense for the Debtors, the rejection of these Contracts & Leases is appropriate. The purpose of the rejections requested herein is to reduce the size and costs of the Debtors' operations to be in line with their income, thus, in turn, fostering the Debtors' reorganization. The Debtors believe that the Contracts & Leases have not been utilized by the Debtors' since the Petition Date. To the extent that any services have been performed by the counterparties or used by the Debtors, the rejection is without prejudice to an appropriate claim under 11 U.S.C. § 503(b) for such actual use.

22. In the business judgment of the Debtors, the rejection of the Contracts & Leases identified in Exhibit "A" is in the best interest of the Debtors, their creditors, all other parties in interest, and should be approved. By rejecting the Contracts & Leases as of the Petition Date, the Debtors will be relieved from burdensome terms under the Contracts. The resulting savings from the rejection of the Contracts & Leases will increase the Debtors' cash flow and assist in managing their estates, further promoting their reorganization. Furthermore, rejection of the Contracts & Leases effective as of the Petition Date is necessary and justified under the circumstances. Thus, the Debtors believe that the *nunc pro tunc* rejection of the Contracts & Leases as of the Petition Date is in the best interest of the Debtors' estates, their creditors, and other parties in interest.

23. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, PREMISES CONSIDERED the Debtors pray that the *nunc pro tunc* rejection of the Contracts & Leases identified in the attached Exhibit "A" be approved, and that the Debtors have such other relief as is just.

Dated: April 18, 2013.

Respectfully submitted,

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**PROPOSED COUNSEL FOR
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April 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.

UPH Holdings, Inc.
Pac-West Telecomm, Inc.
Tex-Link Communications, Inc.
UniPoint Holdings, Inc.
UniPoint Enhanced Services, Inc.
UniPoint Services, Inc.
nWire, LLC
Peering Partners Communications, Inc.
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Ilana Volkov
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD, P.A.
25 Main Street
Hackensack, New Jersey 07601

/s/ Patricia B. Tomasco

Patricia B. Tomasco

EXHIBIT A
EXECUTORY CONTRACTS

Vendor	Billing Account Number	Contract ID	Notes/Address
Verizon California	2091821065	02DINV366100006GTCA	Payment Processing P.O. Box 96880 Mission Hills, CA 91346-9688
Verizon	C11S804601390 N31S322800098 02DINV366100007GTCA	02DINV366100006GTCA 15LGF5139008003PT	P. O. Box 15026 Albany, NY 12212-5026
Qwest Communications	2062070200993B 2062070200993B	2066225188277 2067633834453	P.O. Box 8561690 Louisville, Ky 40285-6169
Frontier Communications	<i>See Attached.</i>		Attn: Access Billing P.O. Box 92713 Rochester, NY 14692-000
CenturyLink	408217083 408217083 408217083 408217083	2538511545 2538513930 2538519641 2538534844	Floor 11 20 East Thomas Road Attn: Ana Phoenix, AZ 85012
Central Telephone CO of NV-24	23487379S3	77LSXU7022983135	6700 Via Austin Parkway, Las Vegas, NV 89119
AT&T	<i>See Attached.</i>		901 Marquette, 8th Fl, Minneapolis, MN 55402
AT&T/POTS	POTS/407-481-8044 POTS/314-588-0188		901 Marquette, 8th Fl, Minneapolis, MN 55402
Cogent	Fiber Port/1-26891300 VLAN/1-26891562 VLAN/1-26891573 VLAN/1-59075838 VLAN/1-35232953 VLAN/1-26891716 VLAN/1-26891738 VLAN/1-26891727		1900 S Norfolk San Mateo, CA 94403

Vendor	Billing Account Number (VENDOR)	Billing Address
	Fiber Port/Orlando/ Order:1-21730341 Fiber Port/Dallas/ Order: 1-25882951 Fiber Port/St. Louis/ Order: 1-25889206	
Colo Solutions	COLO/1_Rack_ORLD FIBER X-CNT/ ATLNAMQW57ORLDFLLUWOS_100 BASET_0001 FIBER X-CNT/IN-7QJ DS3 X-CNT/ TW:25/HFGS/1066008/TWCS	PO Box 791087 Baltimore, MD 21279-1087
Level 3 Communications	DS1 OVFL/40338012-40338025 DS1 OVFL/40353269-40353278 FIBER PORT/01/FEGS/102517/153/PQC BBGP6140 BBS0251 BBJR7659 TWC02125089 TWC02125093 TWC02126681 TWC02153277 TWC02153278 TWC02153279 TWC02223600 TWC02223604 TWC02201628 TWC02206825 TWC02274445 TWC02334551 TWC02390747 TWC02437521 TWC02440000 TWC02443701 TWC02499029 TWC02291034 TWC02294062 TWC02294063 TWC02297606 04-CRF-0212 05-CRF-0270 TWC02206820 TWC02206825 TWC02273823	PO Box 910182 Denver, CO 80291-0182

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

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

DEBTORS. § CHAPTER 11

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

**6500 RIVER PL. BLVD., BLDG. 2, # 200 § JOINTLY ADMINISTERED UNDER
AUSTIN, TEXAS 78730 § CASE NO. 13-10570**

**DEBTORS' FIFTH OMNIBUS MOTION FOR ORDER APPROVING
REJECTION OF UNEXPIRED CONTRACTS NUNC PRO TUNC TO PETITION DATE**

**PARTIES RECEIVING THIS OMNIBUS MOTION
SHOULD LOCATE THEIR NAMES AND THEIR
CONTRACTS OR LEASES AND OTHER AGREEMENTS
IN THE ATTACHED EXHIBIT A.**

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 Fifth Omnibus Motion for Order Approving the Rejection of Unexpired



Contracts & Leases *Nunc Pro Tunc* to Petition Date (defined herein) (the "Motion") pursuant to 11 U.S.C. § 365(a) and Rule 6006 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"). A hearing will be held on the Motion before the Honorable Tony M. Davis, United States Bankruptcy Judge, United States Bankruptcy Court for the Western District of Texas, Austin Division, on **August 8, 2013, at 1:30 p.m. (CDT)**. Any objections or responses to the relief requested herein should be filed on or before **August 2, 2013** with the Bankruptcy Court. 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)(A) and (O). The relief requested in this Motion is sought pursuant to 11 U.S.C. § 365(a).

II. FACTUAL BACKGROUND

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

3. The Debtors are a group of affiliated entities that provide telecommunication services in a variety of contexts including voice over Internet protocol ("VoIP"), local exchange and enhanced telecommunications, and data services. A 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' desire to reject various executory contracts that are burdensome to their estates.

III. RELIEF REQUESTED

5. Pursuant to this Motion, Debtors seek an order from the Court approving the rejection of certain unexpired leases and contracts (the "Contracts") identified in Exhibit "A." The Debtors request that the rejection of the Contracts be authorized *nunc pro tunc* to the Petition Date. A list of the Contracts subject to this Motion is attached hereto as Exhibit "A." The Debtors entered into the Contracts with the parties identified in Exhibit "A." The Debtors will provide copies of the Contracts upon the request of any interested party in this matter as the documents are voluminous and production other than on request would be burdensome and expensive.

6. The Debtors also request that the deadline for filing an objection or other response to this Motion be filed on or before August 2, 2013 with the Bankruptcy Court.

7. Pursuant to § 365(a) of the Bankruptcy Code, the Debtors may, subject to Court approval, reject unexpired leases and executory contracts. The Bankruptcy Code does not provide a standard for determining when a debtor's rejection of an executory contract is appropriate. *See In re Monarch Tool & Manufacturing Co.*, 114 B.R. 134 (Bankr. S.D. Ohio 1990). Bankruptcy courts, however, generally acknowledge that the business judgment standard should be applied to determine whether to authorize the rejection of executory contracts and unexpired leases. *See In re Liljeberg Enters., Inc.*, 304 F.3d 410, 438 (5th Cir. 2002); *In re Pilgrim's Pride Corp.*, 403 B.R. 413 (Bankr. N.D. Tex. 2009); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36 (3d Cir. 1989). Notably, the burden or hardship on the non-debtor party to a rejected contract is not a factor to be considered. *See Borman's, Inc. v. Allied Supermarkets, Inc.*, 706 F.2d 187, 189 (6th Cir. 1983).

8. In addition, bankruptcy courts are empowered to authorize retroactive rejection of an executory contract or unexpired lease under § 365(a) of the Bankruptcy Code if the equities favor retroactive rejection. See, e.g., *Thinking Machines Corp. v. Mellon Financial Services Corp #1 (In re Thinking Machines Corp.)*, 67 F.3d 1021, 1028 (1st Cir. 1995); *Stonebriar Mall Ltd. P'ship v. CCI Wireless, LLC (In re CCI Wireless, LLC)*, 297 B.R. 133, 138 (D. Colo. 2003).

9. As stated above, after careful review and due deliberation, the Debtors have determined in their business judgment that the Contracts are unnecessary to the continued operation of the Debtors' businesses, have no value to the Debtors' estates, and should be rejected. As a consequence, the Contracts are no longer of use to the Debtors. Moreover, the Contracts have terms that are burdensome on the Debtors and have no residual value for the Debtors. Additionally, because the failure to reject these Contracts could result in the incurrence of unnecessary expense for the Debtors, the rejection of these Contracts is appropriate. The purpose of the rejections requested herein is to reduce the size and costs of the Debtors' operations to be in line with their income, thus, in turn, fostering the Debtors' reorganization. The Debtors believe that the Contracts have not been utilized by the Debtors since the Petition Date. To the extent that any services have been performed by the counterparties or used by the Debtors, the rejection is without prejudice to an appropriate claim under 11 U.S.C. § 503(b) for such actual use.

10. In the business judgment of the Debtors, the rejection of the Contracts identified in Exhibit "A" is in the best interest of the Debtors, their creditors, all other parties in interest, and should be approved. By rejecting the Contracts as of the Petition Date, the Debtors will be relieved from burdensome terms under the Contracts. The resulting savings from the rejection of the Contracts will increase the Debtors' cash flow and assist in managing their estates, further promoting their reorganization. Furthermore, rejection of the Contracts effective as of the Petition Date is necessary

and justified under the circumstances. Thus, the Debtors believe that the *nunc pro tunc* rejection of the Contracts as of the Petition Date is in the best interest of the Debtors' estates, their creditors, and other parties in interest.

WHEREFORE, PREMISES CONSIDERED the Debtors pray that the *nunc pro tunc* rejection of the Contracts identified in the attached Exhibit "A" be approved, and that the Debtors have such other relief as is just.

Dated: July 9, 2013.

Respectfully submitted,

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COUNSEL FOR DEBTORS-IN-POSSESSION

CERTIFICATE OF SERVICE

I hereby certify that on the 9th 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.

UPH Holdings, Inc.
Pac-West Telecomm, Inc.
Tex-Link Communications, Inc.
UniPoint Holdings, Inc.
UniPoint Enhanced Services, Inc.
UniPoint Services, Inc.
nWire, LLC
Peering Partners Communications, Inc.
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Burlington, MA 01803

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Las Vegas, NV 89133-6430

Cox Communications
1550 W. Deer Valley Rd.
Phoenix AZ 85027

CenturyLink
P.O. Box 2961
Phoenix, AZ 85062-2961

Frontier
P.O. Box 92713
Rochester, NY 14692-0000

Cogent Communications
P.O. Box 791087
Baltimore, MD 21279-1087

Genband, Inc.
ATTN: Eric Hinton
2801 Network Blvd
Suite 300
Frisco, TX 75034

Samsara
1250 S Capital of Texas Highway
Bldg 2-235
West Lake Hills, TX 78746

La Arcata Development Limited
ATTN: ACCOUNTS RECEIVABLE
c/o NAI Reco Partners
1826 N. Loop 1604 W, #250
San Antonio, TX 78248

Grande Communications Network
Dept 1204
P.O. Box 121204
Dallas, TX 75312-1204

Telus Corporation
215 Slater Street
Ottawa, Ontario, K1P 5N5
CANADA

Alpheus Communication
Attn: SVP - Contract
Administration
1301 Fannin, 20th Floor
Houston, TX 77002

Hines REIT One Wilshire, LP
Attn: Kevin McInerny
624 S. Grand Avenue
Suite 2435
Los Angeles, CA 90017

Bandwidth.Com, Inc.
75 Remittance Drive, Suite 6647
Chicago, IL 60675

Pac Bell
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Atlanta, GA 30321-0649

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1050 Connecticut Ave. N.W.
Washington, DC 20036-5339

FPL FiberNet LLC
TJ412-01-0-R
ATTN: FISCAL SERVICES
2540 Shumard Oak Boulevard
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LIST OF CONTRACTS TO REJECT

Vendor	Address	BAN	Circuit ID
AT&T	PO Box 5001 Carol Stream, IL 30197-5001	0720962449782	R007OC48SKTNCACZW01SKTNCA01 R007OC48SKTNCACZW01SKTNCAONW03 R007OC48SKTNCAONW03SKTNCA01
AT&T	PO Box 5001 Carol Stream, IL 30197-5001	713L0220423466	2814773997211 2814978687127 2815790294347 2816048298798 2818679918927 7134644516265 7134656985051 7135926431875 7136337940730 7136581151856 7136888822652 7137762407625 7139573028601
AT&T	PO Box 5001 Carol Stream, IL 30197-5001	0720961503894	20/HFGS/506541/PT
Level 3 Communications	PO Box 910182 Denver, CO 80291-0182	1-113306986	BBFM9148
Cogent	1900 S Norfolk San Mateo, CA 94403	UNIPOINT90001	1-25882951 1-59076003 1-59075955 1-35233021 1-26891551

			1-26891639 1-26891595 1-51972367
Telepacific	General Counsel, 515 S. Flower St 47th FL, Los Angeles, CA 90017	385138	CAL-001-5724
Customer	Address	Contract Date	Contract Name
Voxbone	Avenue Louise 489 Clans Bldg 6th Floor 1050 Brussels Belgium	November 24, 2011	Addendum -- Marketing Fee Inbound

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Previous Balance						\$625,376.46
Payments and Other Activity						
02/01/13	Feb. 2013 Finance Charge					\$7,521.66
Current Charges						
Electricity - Order:1-11981536	03/01/13	03/31/13	\$0.00	\$0.00	\$0.00	
Private cage - Order:1-11981517	03/01/13	03/31/13	\$8,200.00	\$0.00	\$8,200.00	
Amount Due						\$641,098.12

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