

**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' MOTION PURSUANT TO 11 U.S.C. § 505(A)
FOR THE DETERMINATION OF DEBTORS' TAX LIABILITY**

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 Motion Pursuant to 11 U.S.C. § 505(a) for the Determination of Debtors' Tax Liability, and in support thereof, the Debtors would show:

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I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested in this Motion is sought pursuant to 11 U.S.C. §§ 105 and 505(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. No trustee or examiner has been requested or appointed. The Office of the United States Trustee has appointed an official committee of unsecured creditors in these cases (the "Committee").

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

4. The instant Motion is directed at the Debtors' request for a determination by the Court of property tax liability with respect to various taxing authorities, as hereinafter identified ("Taxing Authorities"). The Debtors believe that the assessments made by various taxing authorities are not justifiable and are based upon excess and incorrect valuation. To this end, and related particularly to the Debtors' property located in California, an appraisal of property owned by the Debtors located at the Stockton, California headquarters and Los Angeles telecommunications center was recently

completed by PICS Telecom International. According to the appraisal, the assets in the Stockton, California site would sell for between \$800,000 and \$1,000,000, in “as is” condition on the secondary equipment market. Further, fair market value was calculated based on PICS Telecom International’s sales history, current market trends, and availability. The appraisal included an average depreciation rate for the assets of approximately 8% annually. Based on this recent appraisal, the Debtors are able to extrapolate conservative values of personal property in California back to the January 1 assessment of each relevant year for state tax purposes.

5. With this information from the appraisal, the Debtors believe that assessments and corresponding tax liabilities are based on excessive and inaccurate valuation, particularly for personal property located in California. The Debtors believe that if the assessments and corresponding tax liabilities are properly determined, the Debtors’ tax liabilities will be reduced, and it is thus in the best interest of their estates to attempt a reduction of their tax liabilities and to do so via the most expeditious procedures available. Accordingly, it is within the best interest of the Debtors’ creditors and the estates to request that this Court determine the Debtors’ property tax liabilities for 2013 owed to the Taxing Authorities pursuant to § 505(a).

III. RELIEF REQUESTED

6. Pursuant to this Motion, the Debtors seek a determination of their tax liabilities, if any, to the Taxing Authorities. Following is a chart that includes the Taxing Authorities to whom tax liabilities may be owed, and which are the subject of this Motion (“Tax Chart”).

Taxing Authority	Type of Tax Alleged or Estimated	Proof of Claim No.	Basis for Motion
Aldine ISD Houston, Texas	Ad valorem	No. 9, filed in Case No. 13-10573 (note: no claim filed for 2013 for which determination is requested)	Valuation

Taxing Authority	Type of Tax Alleged or Estimated	Proof of Claim No.	Basis for Motion
Bexar County, Texas	Ad valorem	No. 11, filed in Case No. 13-10571 (note: no claim filed for 2013 for which determination is requested)	Valuation
California State Board of Equalization	Ad valorem	No. 101, filed in Case No. 13-10571	Valuation; Inapplicable Escaped Assessment
Dallas County Tax Office	Ad valorem	No. 1, filed in Case No. 13-10573 No. 1, filed in Case 13-10571 (note: no claim filed for 2013 for which determination is requested)	Valuation
Harris County, Texas	Ad valorem	No. 3, filed in Case No. 13-10572 No. 5, filed in Case No. 13-10573 (note: no claim filed for 2013 for which determination is requested)	Valuation
San Joaquin County Tax Collector	Ad valorem	Nos. 8, 41, and 60, filed in Case No. 13-10571 (note: no claim filed for 2013 for which determination is requested and may be subject to California escaped assessment)	Valuation

Taxing Authority	Type of Tax Alleged or Estimated	Proof of Claim No.	Basis for Motion
Los Angeles County Treasurer and Tax Collector	Real property ¹ and ad valorem	No. 68, filed in Case No. 13-10571 (claim purports to be for 2013 and includes real property that the Debtors do not own; may be subject to California escaped assessment) No. 19, filed in Case No. 13-10573	Valuation/lack of real property to which tax could attach
Travis County, Texas	Ad valorem	No. 14, filed in Case No. 13-10572 No. 39, filed in Case No. 13-10573 (note: no claim filed for 2013 for which determination is requested)	

7. Section 505(a) of the Bankruptcy Code provides as follows:

(a)(1) Except as provided in paragraph (2) of this subsection, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

Section 505 vests broad power in the Court to determine the amount or legality of tax liability owed. *In re Luongo*, 259 F.3d 323, 330 (5th Cir. 2001); *In re Legal Xtranet, Inc.*, 453 B.R. 699, 706 (Bankr. W.D. Tex. 2011) (citing *In re Prescription Home Health Care, Inc.*, 316 F.3d 542, 547 (5th Cir. 2002)). The scope of the Court’s authority to determine the amount or legality of any tax is broad, encompassing both federal and state tax liabilities. *In re Mayfair Mills, Inc.*,

¹ The Debtors own no real property.

295 B.R. 827, 833 (Bankr. S.C. 2002) (citing *New Haven Projects Ltd. Liab. Co. v. City of New Haven* (*In re New Haven Projects Ltd. Liab. Co.*), 225 F.3d 283, 286 n.2 (2d Cir. 2000)).

8. Section 505 empowers the Court to determine the correct amount of the tax liabilities owed, if any, by the Debtors to the Taxing Authorities. All of the Taxing Authorities listed in the Tax Chart have asserted, via filed proofs of claim, or with respect to the California State Board of Equalization (“California SBE”), an audit for escaped assessments based on a 2011 property statement, certain amounts of estimated tax liabilities for 2013, allegedly owed by the Debtors.

9. As to all of the amounts asserted by the Taxing Authorities, the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has not expired. All of the Taxing Authorities are either located in California or Texas. Under California law, the clerks of county assessment appeals boards and county board of equalization have certified the assessment appeals filing period for particular counties pursuant to CAL. TAX. & REV. CODE § 1603. With respect to Los Angeles and San Joaquin counties included in the purview of this Motion, such filing period ends on December 2, 2013. Accordingly, the time period has not expired. With respect to those Taxing Authorities in Texas, all of the potential tax liabilities for which determination is sought are for tax year 2013, and are merely estimated at this time.

10. In addition, with respect to amounts that may be owed by the Debtors to the California SBE, such amounts are based upon a recent audit and notice that the Debtor Pac-West recently received from the California SBE (“California SBE Audit”), dated August 21, 2013. Under the California SBE Audit, the California SBE informed the Debtors that it had performed a property tax audit of personal property owned by the Debtor Pac-West, for the years 2011, 2012, and 2013. In particular, the California SBE Audit stated that any action would be deferred until September 23, 2013, to permit the Debtors to provide additional data to the California SBE to alter its findings.

11. In the California SBE Audit, the California SBE referred to a 2011 Property Statement the Debtors filed, reporting \$21,337,263 worth of property, of which \$6,764,678 was exempt software. *See* CAL. REV. & TAX CODE § 995. The California SBE audit then goes on to assert that because the Debtor Pac-West has not substantiated its right to claim such property as exempt software that the California SBE would assess an escaped assessment, and a related penalty, as well as an assessment in lieu of interest, amounting to an additional \$6,825,000 assessment. But, the Debtor Pac-West does not own the exempt software the subject of the California SBE Audit. Accordingly, the Debtors should not be liable for such escaped assessment or the attendant penalty and assessment in lieu of interest. As stated in the California SBE Audit, the time period for the Debtors to dispute the findings of the California SBE has not yet expired, and the Debtors are still permitted to provide additional data to the California SBE with respect to the information in the 2011 Property Statement and in support of the Debtors' position. *See also* CAL. REV. & TAX CODE § 51.5(b) (providing that an error or omission involving the exercise of an assessor's judgment as to value may be corrected only if it is placed on the current roll or roll being prepared or is otherwise corrected within four years after July 1 of the assessment year for which the base year value was first established.); CAL. CODE. REGS. PUB. REVENUES 18 § 264(b) (2002) (stating that "assessment year for which the base year value was first established" means the assessment year during which the assessor actually enrolls the new base year value resulting from a change in ownership.") The valuation contained in the 2011 Property Statement is thus still open for challenge by the Debtors, and thus may be determined by this Court pursuant to § 505(a).

12. At a hearing, the Debtors will put forth evidence disputing the assertions in the California SBE Audit, demonstrating that the Debtors do not own any software upon which the California SBE asserts an escaped assessment applies. Because the Debtors do not own software to

which such an escaped assessment could apply, the Debtors will demonstrate that they should not be liable for such escaped assessment, which is anticipated to result in savings to the Debtors. Accordingly, the Debtors request that this Court determine the amount or legality of the tax owed by the Debtors to the California SBE.

13. With respect to the other Taxing Authorities, at hearing, the Debtors will put on substantive proof of the correct valuations upon which any determination of tax liability owed to any of the Taxing Authorities should rest for the undetermined taxes due to the applicable Taxing Authority. In addition, with respect to those Taxing Authorities that have based valuation, and thus estimated taxes, on property not owned by the Debtors, the Debtors will put forth evidence to correct such errors. In particular, with respect to the Los Angeles County Treasurer and Tax Collector, which has asserted taxes owed by the Debtors relating to real property, the Debtors own no real property, and such error must be corrected. As addressed above, the Debtors believe that the recent appraisal by PICS Telecom International provides support for drastically lowered valuations of the Debtors' personal property in California, which should result in lowered tax liabilities for the Debtors. Then, once this Court makes its determination regarding taxes due under § 505, the appropriate Taxing Authority may then assess such tax. *See* § 505(c).

14. Permitting the Debtors to put forth uniform evidence in a single forum will serve the larger policies underlying the administration of the Debtors' bankruptcy cases because it will centralize the resolution of tax claims and liabilities. Further, resolution of the amount of taxes owed by the Debtors in this manner streamlines the closing of the Debtors' recent sale. Otherwise, to accomplish the same goals, the Debtors would have to undertake these same efforts under separate state administrative schemes in both Texas and California, which is anticipated to be less expeditious and less efficient. In addition, such relief is well within the Court's authority under § 505.

WHEREFORE, PREMISES CONSIDERED the Debtors respectfully request that the Court enter an order (i) granting their Motion Pursuant to 11 U.S.C. § 505(a) for the Determination of Debtors' Tax Liability (herein "Motion"); and (ii) granting such other relief to which the Debtors may show themselves entitled.

Dated: September 11, 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2013, a true and correct copy of the foregoing was served via the Court's CM/ECF electronic notification system on all parties requesting same, and via US first class mail, post prepaid to the parties listed below, and on the attached service list.

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