

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
	§	
<b>DEBTORS.</b>	§	<b>CHAPTER 11</b>
	§	
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	§	<b>JOINTLY ADMINISTERED UNDER CASE NO. 13-10570</b>

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**DEBTORS' POST-HEARING BRIEF CONCERNING  
THE DEBTORS' MOTION PURSUANT TO 11 U.S.C. § 505(A)  
FOR THE DETERMINATION OF DEBTORS' TAX LIABILITY AS IT  
RELATES TO THE CALIFORNIA STATE BOARD OF EQUALIZATION AUDIT**

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 Post-Hearing Brief Concerning the Debtors' Motion Pursuant to 11 U.S.C. § 505(a) for

the Determination of Debtors' Tax Liability as it Relates to the California State Board of Equalization Audit ("Post-Hearing Brief"), and in support thereof, the Debtors would show:

**I. FACTUAL BACKGROUND**

1. On September 11, 2013, the Debtors filed their Motion Pursuant to 11 U.S.C. § 505(a) for the Determination of Debtors' Tax Liability ("Motion"). In the Motion, the Debtors requested that, pursuant to 11 U.S.C. § 505(a), that the Court determine property tax liability with respect to various taxing authorities ("Taxing Authorities"). In the Motion, among other things, the Debtors stated that they (particularly the Debtor Pac-West) had received a recent audit and notice from the California SBE ("2013 Audit"), dated August 21, 2013. A copy of the 2013 Audit is attached as Exhibit "A." As the Debtors stated in the Motion, under the 2013 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. *See Ex. A.* In particular, the 2013 Audit stated that any action on the audit would be deferred until September 23, 2013, to permit the Debtors to provide additional data to the California SBE to alter its findings. *See Ex. A.*

2. On October 1, 2013, the State Board of Equalization of California ("SBE") filed its Opposition to Debtors' Motion Pursuant to 11 U.S.C. § 505(a) for the Determination of Debtors' Tax Liability; Declaration of Krystle Parkison in Support Thereof ("Opposition") [Dckt. No. 530]. In the Opposition, the SBE asserted, among other things, that this Court should not exercise its permissive authority under § 505 to determine tax liabilities with respect to the SBE.

3. On October 10, 2013, the Court conducted a hearing on the Motion, as it related to the Los Angeles County Treasurer and Tax Collector ("LA County") and the SBE.<sup>1</sup> Respective counsel for

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<sup>1</sup> At the hearing, counsel for the Debtors and counsel for LA County announced an agreement, and on October 21, 2013, the Court entered the Agreed Order Determining Debtors' Tax Liability Due to the Los Angeles County Treasurer and Tax Collector. [Dckt. No. 569].

the SBE, LA County, and the Debtors appeared at the hearing. At the conclusion of the hearing, the Court requested briefing on issues raised at the hearing related to SBE and the 2013 Audit.

4. As the Debtors stated in their Motion, their Reply, and at the hearing, the Debtors believe that this Court should exercise its authority under § 505(a) to determine the effect of the 2013 Audit on the Debtors' tax liability to the SBE. On its face, the 2013 Audit opens up the issue of valuation of the Debtors' assets for purposes of determining their tax liability to various county tax authorities, and such determination can be done most efficiently by this Court. *See* Ex. A. Such efficiency should be measured in terms of the Debtors' contemporaneous efforts in working toward approval of their proposed disclosure statement and achieving confirmation of their proposed chapter 11 plan of reorganization.<sup>2</sup>

5. Further, pursuant to the 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) Payment of the Net Proceeds of Sale to Hercules Technology II, L.P., and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ("Sale Order") [Dckt. No. 446], the Debtors have sold substantially all of their assets, essentially rendering the 2013 Audit moot as to any secured tax liability. To the extent that the California SBE would attempt to utilize the 2013 Audit as a basis to assert additional amounts against the Debtors, such amounts should be barred because the applicable bar date has already passed. Accordingly, the Debtors' Motion should be granted as to the California SBE. Without a determination as to the effect of the 2013 Audit, the Debtors will be forced to move toward confirmation of their proposed plan with a dark

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<sup>2</sup> The Debtors filed their proposed Chapter 11 Plan of Reorganization [Dckt. No. 516] and proposed Disclosure Statement in Support of Chapter 11 Plan of Reorganization [Dckt. No. 515] on September 23, 2013. A hearing on approval of the proposed Disclosure Statement has been set for December 12, 2013.



cloud of uncertainty hanging over their estates, which is decidedly not in the best interest of their estates, creditors, or parties in interest.<sup>3</sup>

## II. ARGUMENT & AUTHORITIES

### A. The Applicable Period to Contest Valuation Has Not Expired Due to the California SBE Audit

6. As the Debtors discussed at the hearing on the Motion, the only limitation that should apply to this Court's determination of the Debtors' tax liability based on the California SBE audit is for any tax liability for which the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired. *See* § 505(a)(2)(C). As the Debtors have already stated, with respect to the California SBE audit or prior valuation, the period of limitations would be closed as to valuation issues based upon the facts present, if it had not been for the 2013 Audit. Under California law, annual state-assessed property valuation issues generally become final by "July 20 and September 20 of the same calendar year in which the notice is provided," California law also provides that when state-assessed property becomes subject to an SBE escaped assessment audit, and it is discovered that property was incorrectly valued or misclassified, valuation issues are open for contest. To this point, CAL. TAX. & REV. CODE 4876.5 provides as follows:

When it can be ascertained by the board from an audit of an assessee's books of account or other papers that the property of the assessee was incorrectly valued or misclassified for any cause, then to the extent that this error caused the board to assess taxable tangible property which should not have been assessed or to assess it at a higher valuation than the board would have entered on the roll if the error had not occurred, the roll may be corrected under this article at any time within four years after the assessment was made or within the period for which a waiver is given pursuant to section 868.

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<sup>3</sup> The Debtors settled any remaining liability with respect to the County of Los Angeles. The Debtors assert that the default by San Joaquin County and the settlement by LA County moots any further relevance of the 2013 Audit or the corrected valuations that the 2013 Audit invites. Either the 2013 Audit is moot as a result or should any tax authority assert an additional ad valorem claim, the audit open up prior tax years for this Court's scrutiny.

Consistent with § 4876.5, after reviewing the Debtors' property, the SBE sent the Debtors a proposed audit adjustment for the years 2011, 2012, and 2013. As stated in the Debtors' Motion, on August 21, 2013, the California SBE sent the Debtors a "30-Day Notice Pac-West Telecomm, Inc. (SBE No. 2043) Property Tax Audit" (herein "2013 Audit"). The 2013 Audit provided that the California SBE had performed a property tax audit of personal property owned by the Debtor Pac-West, for the years 2011, 2012, and 2013. The 2013 Audit provided that the SBE "will defer further action on this report until September 23, 2013, so that [the Debtor] may provide any additional data that might alter our findings." *See* 2013 Audit, p. 1. The 2013 Audit further provided that if the proposed audit adjustments were accepted, the Debtors would receive office notice of same, and of the time period for filing a petition for reassessment. *See* 2013 Audit, p. 1.

7. Notably, the 2013 Audit expressly provided that it covered "Assessment Years 2011, 2012, and 2013." *See* 2013 Audit, p. 3. In fact, the 2013 Audit, after referencing the Debtors' Petition Date, stated that the Debtors had last been audited by the SBE in 2010, which audit covered the prior three years, 2007 through 2010. *See* 2013 Audit, p. 5. Finally, the 2013 Audit provided that "[t]he purpose of this audit was to determine the accuracy, completeness and reliability of the financial data furnished by Pac-West and used by the Board in the valuation process for assessment year 2011, 2012, and 2013." *See* 2013 Audit, p. 5. Accordingly, as the plain language of the 2013 Audit indicates, the SBE has provided the Debtors with an opportunity to contest valuation with respect to tax years 2011-2013, and as supported by CAL. TAX. & REV. CODE 4876.5, the applicable period for the Debtors to contest valuation for such years has not expired. Because the applicable period for the Debtors to contest valuation has not expired due to the 2013 Audit, this Court may determine the amount of taxes, if any, to the California SBE, pursuant to § 505(a).

**B. Due to the Free and Clear § 363 Sale of the Debtors' Assets, the Court Should Determine that the 2013 Audit is Moot**

8. As discussed above, this Court should determine that the 2013 Audit is moot for two central reasons, including (1) the Sale Order provided that the sale of the Debtors' assets would be, pursuant to § 363, free and clear of all liens, claims, or other encumbrances, which would include any tax liability sought to be imposed via the 2013 Audit by the California SBE; and (2) the applicable bar date has passed for the California SBE, and it thus can no longer seek a claim for additional taxes relevant to the time periods in the 2013 Audit.

9. On July 23, 2013, after a hearing, the Court entered the Sale Order. The Sale Order explicitly provided that the Court permitted the Debtors to sell their assets free and clear of any lien, claim, or interest, except for permitted encumbrances and assumed liabilities. *See* Sale Order, ¶ 22. Notably, the Sale Order provided that such sale was permitted because, in addition to the consent of their secured lender, Hercules Technology II, L.P. ("Hercules"), holders of liens or claims against the Debtors, their estate, who did not object to the sale, or who withdrew their objections to the sale, were deemed to have consented pursuant to § 363(f)(2). *See* Sale Order, ¶ 24.

10. Further, the Sale Order also provided that the Debtors were obligated to establish an escrow account up to \$350,000 to account for ad valorem tax claims to be administered as provided in the Sale Order ("Tax Escrow") *See* Sale Order, ¶ 35. This amount was determined based on filed tax claims. As to such administration of the ad valorem tax claims, the Sale Order provided that the Debtors were authorized to transfer their assets to the Buyer (as defined in the Sale Order) free and clear of all encumbrances or interests, provided that, among other things, ad valorem taxes shall attach to the proceeds of the Sale, "*provided, further, however, that any ad valorem tax liens for the 2013 tax year against [the Debtors' assets sold pursuant to the Sale] shall remain in effect and be retained against the property taxed until said taxes, if any are paid.*" *See* Sale Order, ¶ 37. (emphasis in



original) The Sale Order further delineated that the Tax Escrow would be the source of payment for “allowed and proper pre-2013 claims of any ad valorem tax authority, plus any allowable interest thereon at the rate set forth in 11 U.S.C. § 511(a),” and be paid from the Tax Escrow unless objected to by the Debtors or Hercules. Any amounts remaining in the Tax Escrow, resulting from resolution or court disposition of any disputed ad valorem tax claims not needed to cover remaining ad valorem tax claims are to be paid first to Hercules, until its claim is satisfied, and thereafter to the Debtors. *See* Sale Order, ¶ 37.

11. Accordingly, this Court should determine that, notwithstanding the California SBE’s apparent aim with respect to the 2013 Audit, any tax liability sought to be levied against the Debtors for prior years has been rendered moot due to the Sale Order. Because the sale of the Debtors’ assets was free and clear, no such encumbrances can now exist. The sale has closed, and the Debtors’ assets, including property the subject of the 2013 Audit has been sold. Accordingly, the 2013 Audit is moot, and should be determined to be of no consequence to the Debtors or the sold property.

**C. Due to the Exigent Concerns of the Debtors’ Estates, the Court Should Determine that to the Extent that the 2013 Audit Seeks to Assert Additional Claims, Such Claims are Barred by the Passing of the Bar Date**

12. The bar date for proofs of claim in the Debtors’ cases was July 22, 2013, and the bar date for governmental units, including those based on the California SBE audit, was September 24, 2013 (“Bar Date”). The applicable Bar Date thus has now since passed. Accordingly, the California SBE is now precluded by the passing of the Bar Date from asserting additional amounts due from the Debtors.

13. The Bar Date serves an important and essential function, as it promotes efficient administration of the Debtors’ bankruptcy cases. As the bankruptcy court in *In re Milan Steel Fabricators, Inc.*, 113 B.R. 364 (Bankr. N.D. Ohio 1990) observed: “The requirement that creditors file proofs of claim within a limited time in bankruptcy cases is necessary if cases are to be

administered effectively.” The court in *Milan Steel* then recognized that the bar date in bankruptcy cases actually serves a broader purpose than do statutes of limitations because of the importance of finality to bankruptcy cases. *See id.* In fact, the bar date does not merely function as a benefit to the debtor in bankruptcy, but rather, functions for the benefit of all creditors and parties in interest. *See, e.g., In re Manville Forest Products Corp.*, 89 B.R. 358, 374 (Bankr. S.D.N.Y. 1988) (stating that the bar date “serves the important purpose of enabling the parties to a bankruptcy case to identify with reasonable promptness the identity of those making claims against the bankruptcy estate and the general amount of the claims, a necessary step in achieving the goal of successful reorganization”).

14. In fact, the bar date is so critical to the bankruptcy process that courts have cautioned that the amendment process “may not be used as a mechanism for circumventing the bar date.” *In re Enron Corp.*, 328 B.R. 75 (Bankr. S.D.N.Y. 2005) (citing *In re Drexel Burnham Lambert Group Inc.*, 151 B.R. 684, 694 (Bankr. S.D.N.Y. 1993)). Moreover, for the same reasons, the Fifth Circuit in *Matter of Robintech, Inc.*, 863 F.2d 393 (5th Cir. 1989), reversing the district court, held that a late-filed claim of the Texas Comptroller should not be permitted, and observed that “[t]o allow the late-filed claims of the Comptroller, under the circumstances of this case, would be unfair to all of the creditors who filed on time, despite possible hardships, and whose slice of the bankruptcy pie would be smaller as a result.” (citing *In re Clear Fork Energy Resources, Inc.*, 44 B.R. 110, 113)).

15. In a similar vein, in *In re AM International, Inc.*, 67 B.R. 79 (N.D. Ill. 1986), the district court affirmed the bankruptcy court’s denial of a late-filed claim for sales taxes by Pennsylvania. There, Pennsylvania had filed an untimely amended proof of claim subsequent to an audit Pennsylvania conducted. *Id.* at 81. There, Pennsylvania argued that because the debtor had knowledge of the tax audit, and had participated in the tax audit, that such amendment, although it nearly tripled the debtor’s liability, should be permitted as an amendment. *Id.* at 82. The *AM*



*International* court held such claim was untimely. *Id.* There, as to the equitable factors to be considered, the court remarked that the reasons for the late-filed claim were important and could sway the decision to permit amendment, but because Pennsylvania offered no excuse for its failure to file the second claim by the bar date or its failure to request an extension, and chose instead to point the finger at the debtor, relying on the debtor's participation in and knowledge of the tax audit, the bankruptcy court disallowed the amendment. *Id.*

16. Given the risk that 2013 Audit may be used by the taxing authorities, particularly the California SBE, in attempt to impose additional liability against the Debtors based upon the 2013 Audit, this Court should determine, in accordance with its authority under § 505, that the applicable Bar Date has already passed as to California SBE; and thus, the California SBE may not assert any additional claim against the Debtors, based on the 2013 Audit, or any other asserted basis. The Debtors and their estates, as well as the Debtors' creditors, stand at risk of harm if the 2013 Audit is permitted to linger without any resolution, because of the potential risk that it will serve as the platform for additional amounts to be sought against the Debtors. Instead, the interests of the Debtors, their estates, and the Debtors' creditors are served by the most efficient administration of these bankruptcy cases; a determination by this Court pursuant to § 505(a) that the 2013 Audit cannot serve as the basis for additional amounts to be asserted against the Debtors serves the goal of efficient resolution of these bankruptcy cases.

### **III. CONCLUSION**

For all the legal and factual reasons set forth herein, the Debtors' Motion Pursuant to 11 U.S.C. § 505(a) for the Determination of Debtors' Tax Liability (herein "Motion") as to the California SBE should be granted. In addition, the Court should determine that the 2013 Audit permits the Debtors to contest valuation as to the property the subject of the 2013 Audit, and thus lessen the Debtors' tax liability owed to any taxing authorities relying on the California SBE audit and valuation functions, if

any. Further, the Court should rule that the 2013 Audit has been rendered moot by virtue of the Debtors' § 363 sale of assets, as well as the Sale Order, providing that such sale of the Debtors' assets was free and clear of those secured claims. Finally, because the Bar Date applicable to the California tax authorities has passed, the California SBE should not be permitted to engage in any audit activity that may result in a California tax authority asserting additional amounts against the Debtors.

Dated: October 25, 2013.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of October 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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Las Vegas, NV 89118





STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942878, SACRAMENTO, CALIFORNIA 94278-0081  
1-916 274-3270 • FAX 1-916 285-0132  
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First District, San Francisco  
SEN. GEORGE RUNNER (RET.)  
Second District, Lancaster  
MICHELLE STEEL  
Third District, Orange County  
JEROME E. HORTON  
Fourth District, Los Angeles  
JOHN CHIANG  
State Controller  
CYNTHIA BRIDGES  
Executive Director

August 21, 2013

Ms. Tina Lau  
Pac-West Telecomm, Inc.  
c/o UniPoint Holdings, Inc.  
6500 River Place Blvd, Bldg 2 Ste 200  
Austin, TX 78730

No. 2043

Dear Ms. Lau:

30-Day Notice  
Pac-West Telecomm, Inc. (SBE No. 2043) Property Tax Audit

Enclosed for your review is the report of the property tax audit of Pac-West Telecomm, Inc. (SBE No. 2043) for the years 2011, 2012 and 2013. We will defer further action on this report until September 23, 2013, so that you may provide any additional data that might alter our findings.

After the above date, we will present our findings to the Board for its consideration. An escaped assessment may be entered on the 2014 Board Roll of State-Assessed Property under the provisions of section 864 of the California Revenue and Taxation Code with the 10 percent penalty provided by section 862 added to escaped assessments caused by the assessee. In that instance assessed value in lieu of interest at three-quarters of one percent per month, or fraction thereof, from December 10 of the years the property escaped assessment will be added in accordance with section 864. Assessment in lieu of interest is subject to change based on the Board action date.

If the Board adopts the proposed audit adjustments, you will receive official notice of its action and of the time period for filing a petition for reassessment. Please direct any questions regarding this audit report to Huy Tran at 1-916-274-3318 or Christina Tsang at 1-916-274-3305.

Sincerely,

John K. Thompson, Chief  
State-Assessed Properties Division

JKT:ht  
Enclosures

cc: Mr. Richard Reisinger      All with enclosures  
Mr. David Yeung  
Mr. Samuel Wang  
Ms. Michelle Cruz  
Ms. Christina Tsang  
Mr. Huy Tran

EXHIBIT A

BOE-415 (1-98)

STATE OF CALIFORNIA

**SUMMARY OF AUDIT FINDINGS**

BOARD OF EQUALIZATION

ASSEESSEE NAME Pac-West Telecomm, Inc.	BOE NUMBER 2043
TAX REPRESENTATIVE Tina Lau	DATE OF REPORT 8/21/2013
BUSINESS ADDRESS 6500 River Place Blvd, Bldg 2 Ste 200 Austin, TX 78730	TELEPHONE NUMBER (512) 628-0464
<input checked="" type="checkbox"/> DRAFT <input type="checkbox"/> FINAL	

**Report of Field Audit**       Escaped Assessment       Excessive Assessment

LIEN DATE	AUDIT DIFFERENCES	PENALTY PER SECTION 862	ASSESSMENT IN LIEU OF INTEREST PER SECTION 864	TOTAL
2013	\$1,820,000	\$182,000	\$109,200	\$2,111,200
2012	1,820,000	182,000	273,000	2,275,000
2011	1,820,000	182,000	436,800	2,438,800
TOTAL	\$5,460,000	\$546,000	\$819,000	\$6,825,000

**Summary of Audit Differences**      Escaped or (Excessive) Assessment

DESCRIPTION	2013	2012	2011	TOTAL
Disallowed Software	\$1,818,648	\$1,818,648	\$1,818,648	\$5,455,944
Total Audit Adjustments	\$1,818,648	\$1,818,648	\$1,818,648	\$5,455,944
Rounded Audit Adjustments *	\$1,820,000	\$1,820,000	\$1,820,000	\$5,460,000

**Statute of Limitations**

WAIVER SECURED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DATE WAIVER EXPIRES	PERIOD COVERED
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AUDITOR Huy Tran, Tax Auditor	TELEPHONE NUMBER (916) 274-3318
----------------------------------	------------------------------------

\* Please note: Rounding in accordance with rounding used on post audit value indicators.

Questions regarding this report should be directed to:  
 PROPERTY AND SPECIAL TAXES DEPARTMENT  
 State-Assessed Properties Division  
 P. O. Box 942879  
 Sacramento, CA 94279-0061

**CALIFORNIA STATE BOARD OF EQUALIZATION  
PROPERTY AND SPECIAL TAXES DEPARTMENT  
STATE-ASSESSED PROPERTIES DIVISION**

**Pac-West Telecomm, Inc.  
Company No. 2043**

**Property Tax Audit Report  
August 21, 2013**

**Assessment Years  
2011, 2012, and 2013**

**Prepared By:**

**Huy Tran  
Tax Auditor**

**Christina Tsang, CPA  
Senior Specialist Property Auditor Appraiser**

**EXHIBIT A**



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**Pac-West Telecomm, Inc. (No. 2043)**

**AUDIT REPORT**

**I. GENERAL DISCUSSION**

Pac-West Telecomm, Inc. (Pac-West) is a wholesale provider of advanced telecommunications services. Pac-West offers origination, termination, managed modem, co-location, database and transport services. In September of 2011, Pac-West merged with UniPoint Holdings, Inc. (UniPoint), an Austin-based telecommunications service provider. UniPoint is now the parent company of Pac-West.

On March 28, 2013, Pac-West filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court in the Western District of Texas. UniPoint stated that Pac-West's assets have since been revalued; however, no documentation of revaluation has been provided to this date.

Pac-West was audited by the Board in 2010 and the audit period covered lien dates 2007 through 2010.

**II. PURPOSE**

The purpose of this audit was to determine the accuracy, completeness and reliability of the financial data furnished by Pac-West and used by the Board in the valuation process for assessment year 2011, 2012, and 2013. Pac-West did not file a property statement for lien dates 2012 and 2013.

This audit also included an internal review of the methods, calculations, and assumptions employed for the appraisals completed by the State-Assessed Properties Division (SAPD) staff for the audit period.

**III. SCOPE**

Under the authority of the California Revenue and Taxation Code section 828 and Government Code section 15618, the auditor requested the accounts and information relating to the development of the ReplCLD value indicator. The Board relied solely upon the ReplCLD value indicator in setting the unitary value for each date within the audit period. Accordingly, the primary focus of the audit would have been the reconciliation of reported historical costs by appropriate categories to Pac-West's books, records, and financial statements, had Pac-West provide the auditor with the requested information. Additionally, the auditor would have considered the asset revaluation mentioned above. However, the auditor was unable to schedule a field audit or obtain any documents from Pac-West or UniPoint for review after multiple attempts to contact the assessee.

#### IV. AUDIT FINDINGS

##### **Property, Plant, and Equipment (PP&E)**

Pac-West reported \$21,337,263 worth of property on its 2011 Property Statement, of which \$6,764,678 was exempt software. The auditor made numerous attempts to obtain its books and records to verify the reported costs but to no avail. Since Pac-West failed to provide auditor with any documentation, including support for the exempt software claimed on the 2011 property statement, the auditor disallowed the \$6,764,678 software exemption claimed. Disallowing the software exemption resulted in an escaped assessment amount attributable to lien dates 2011. Since Pac-West did not file the property statements for lien dates 2012 and 2013, the Board adopted values for those lien dates were based on the 2011 lien date Board adopted value. Therefore, any escaped assessment auditor found for lien dates 2011 would also apply to lien dates 2012 and 2013.

The audit adjustment to property costs and the effect on the ReplCLD value indicators for lien dates 2011 through 2013 are as follows:

Lien Date	Audit Adjustment (Cost)	Audit Adjustment (ReplCLD)
2013	\$21,337,263 <sup>1</sup>	\$1,818,648
2012	21,337,263 <sup>1</sup>	1,818,648
2011	6,764,678	1,818,648
Total	\$49,439,204	\$5,455,944

<sup>1</sup>/ Pac-West did not file a property statement for lien date 2012 and 2013, therefore, there was no reported cost.



V. SUMMARY OF AUDIT ADJUSTMENTS

Below is a summary of the audit adjustments that impact the Board-adopted values for the lien dates under audit.

	2013	2012	2011	Total
Reported Historical Cost	\$ -0- <sup>1</sup>	\$ -0- <sup>1</sup>	\$14,572,585	
Audit Adjustment				
Disallowed Software	6,764,678	6,764,678	6,764,678	
Unreported PP&E	14,572,263	14,572,585		
Total Audit Adjustment	21,337,263	21,337,263	6,764,678	49,439,204
Audited Historical Cost	\$21,337,263	\$21,337,263	\$21,337,263	
Originally Board-adopted value	\$7,026,679 <sup>3</sup>	\$7,026,679 <sup>2</sup>	\$7,026,679	
Impact of Audit Adjustment on ReplCLD				
Disallowed Software	1,818,648	1,818,648	1,818,648	5,455,944
Audited ReplCLD	\$8,845,327	\$8,845,327	\$8,845,327	

1./ Pac-West did not file a property statement for lien date 2012 and 2013, therefore, there was no reported cost.

2./ ReplCLD for lien date 2012 was the same as the Board-adopted value for lien date 2011.

3./ ReplCLD for lien date 2013 was the same as the Board-adopted value for lien date 2012.