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

COMMISSION
CLERK

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	§	CASE NO. 13-10577
COMMUNICATIONS, LLC	§	
	§	
DEBTORS	§	Jointly Administered Under
	§	
EIN: 45-1144038; 68-0383568; 74-2729541;	§	CASE NO. 13-10570
20-3399903; 74-3023729; 38-3659257; 37-	§	(Chapter 11)
1441383; 27-2200110; 27-4254637	§	
	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200	§	
AUSTIN, TEXAS 78730	§	

MOTION TO ESTABLISH PROCEDURES FOR
DEBTORS' RESOLUTION OF ADVERSARY PROCEEDINGS

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE U.S. BANKRUPTCY JUDGE TONY M. DAVIS:

COME 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" or "Plaintiffs") hereby file their Motion to Establish Procedures for

COM	_____
AFD	_____
APA	_____
ECO	_____
ENG	_____
GCL	_____
IDM	_____
TEL	_____
CLK	NG

Debtors' Resolution of Adversary Proceedings ("Motion"), and in support thereof, the Debtors respectfully represent as follows:

I. BACKGROUND FACTS AND EVENTS

1. On March 28, 2013, (the "Petition Date"), the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code"). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtors are managing their affairs as debtors-in-possession. On April 15, 2013, the Committee of Unsecured Creditors ("Committee") was appointed [Dckt. No. 91]. Additionally, Hercules Technology II, L.P. ("Hercules") is the Debtors' largest secured creditor.

2. On October 17, 2013, the Debtors commenced filing complaints against certain Defendants seeking recovery pursuant to § 542(b) of the Bankruptcy Code, and for breach of contract, *quantum meruit*, and unjust enrichment, stemming from unpaid intercarrier compensation ("Collection Actions"). On December 18, 2013, the Debtors commenced filing complaints against certain Defendants seeking recovery pursuant to § 547 of the Bankruptcy Code ("Preference Actions," and together with the Collection Actions, and any similar actions the Debtors may file in the future, "UPH Adversaries").

3. To date, the Debtors have filed thirty-three (33) Collection and Preference Actions, and the Debtors anticipate filing additional Collection Actions and Preference Actions. Of those, the Debtors have already settled four such UPH Adversaries, and have filed motions pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") with respect to three such actions. The Debtors are evaluating additional collection, preference, and other matters, and anticipate the need to initiate additional UPH Adversaries pursuant to Rule 7001 of the Bankruptcy Rules. The Debtors accordingly anticipate filing additional motions pursuant to Bankruptcy Rule 9019.

II. RELIEF REQUESTED

4. By this Motion, the Debtors seek an order of this Court establishing a class of controversies concerning which compromises will not require Court approval under Bankruptcy Rule 9019. In particular, the Debtors seek an order of the Court authorizing the Debtors to enter into settlement agreements with the Defendants in any Adversary Proceeding, including both the Collection Actions and the Preference Actions, in which the amount in controversy does not exceed \$150,000 without the necessity of filing a motion pursuant to Rule 9019 of the Bankruptcy Rules. To this end, Bankruptcy Rule 9019(b), entitled "Authority to Compromise or Settle Controversies within Classes," provides as follows:

After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

5. Pursuant to Bankruptcy Rule 9019(b), the Debtors seek to establish a class of controversies wherein the amount in controversy is less than \$150,000, and for which the Debtors are authorized to compromise or settle controversies within such class without further hearing or notice, although the Debtors will provide five (5) calendar days' notice to the Committee and Hercules, whose written approval shall be required (which may be in the form of an email from respective counsel) before the Debtors may enter into any settlement or compromise of such controversy.

6. Notably, in the Debtors' proposed Chapter 11 Plan of Reorganization ("Proposed Plan") [Dckt. No. 516], the Debtors have contemplated the establishment of a Liquidating Trust to pursue actions on behalf of the Debtors, including the Collections Actions and the Preference Actions.¹ See Proposed Plan, § 6.4. In addition, with respect to the functioning of the

¹ A hearing on approval of the Debtors' proposed Disclosure Statement [Dckt. No. 515] is set for February 10, 2013.

Liquidating Trust, the Debtors' Proposed Plan contemplates that the Liquidating Trust will be permitted to consummate compromises involving Liquidating Trust assets or contested claims in which the amount in controversy is less than \$150,000 without seeking Bankruptcy Court approval upon notice and opportunity to be heard. *See* Debtors' Proposed Plan, § 6.4.6.

7. Moreover, and in line with the proposed mechanisms under the Debtors' Proposed Plan with respect to Hercules, the Debtors will fully cooperate with Hercules to respond to reasonable information requests from Hercules as to the status of the UPH Adversaries. *See* Debtors' Proposed Plan, § 4.6.3. Finally, the Debtors will pay seventy-five percent (75%) of funds received from any compromise of any of the UPH Adversaries to Hercules, subject to confirmation of the Debtors' Proposed Plan. The remaining twenty-five percent (25%) of funds received from any compromise or settlement of any of the UPH Adversaries may be held by the Debtors' estate subject to any liens or encumbrances held by Hercules on such funds.

8. The Debtors thus herein are requesting that such parameters be established presently for the class of controversies in which the amount in controversy is less than \$150,000, in advance of confirmation of the Debtors' Proposed Plan, in accordance with Bankruptcy Rule 9019(b). Such parameters will reduce administrative expense of the Debtors' estates associated with settling and compromising the UPH Adversaries, including both the Collection Actions and the Preference Actions. In addition, establishing the same procedures as contemplated under the Debtors' proposed Plan will facilitate a smooth transition with respect to litigation already initiated by the Debtors in the UPH Adversaries.

9. In the event that the amount in controversy for any UPH Adversary exceeds \$150,000, or the Committee or Hercules do not consent to the proposed settlement, the Debtors acknowledge that they may not compromise and settle such UPH Adversary unless and until the

Bankruptcy Court authorizes and approves such compromise and settlement upon motion by the Debtors pursuant to Bankruptcy Rule 9019. In such instances, the Debtors shall provide notice of and the opportunity for a hearing on all such motions to all entities who request notice of such matters.

10. Due to the volume of UPH Adversaries already filed and anticipated to be filed, the Debtors believe that the entry of the requested order will result in the most efficient preservation of assets of the Debtors' estates by eliminating the costly preparation and filing of numerous motions.

11. For all of the reasons stated above, the Debtors believe that entry of the requested order is in the best interest of the Debtors' estates and the Debtors' creditors.

WHEREFORE, PREMISES CONSIDERED the Debtors respectfully request that this Court grant the relief requested herein; that the Court authorize the Debtors to enter into settlement agreements in the Adversary Proceedings pursuant to the terms stated above; and grant such other and further relief to the Debtors as is just and proper.

Dated: January 16, 2014.

Respectfully submitted,

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COUNSEL FOR DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2014, a true and correct copy of the foregoing has been served either electronically or via United States mail, postage prepaid, to the following on the attached Service List.

/s/ Jennifer F. Wertz _____
Jennifer F. Wertz

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	§	
6500 RIVER PL. BLVD., BLDG. 2, # 200	§	
AUSTIN, TEXAS 78730	§	

**ORDER GRANTING MOTION TO ESTABLISH PROCEDURES
FOR DEBTORS' RESOLUTION OF ADVERSARY PROCEEDINGS**

CAME ON FOR CONSIDERATION the Motion to Establish Procedures for Debtors' Resolution of Adversary Proceedings ("Motion") filed by 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" or "Plaintiffs"); and the Court having reviewed the Motion, finds good cause for the relief granted herein. It is therefore

ORDERED that the Motion to Establish Procedures for Debtors' Resolution of Adversary Proceedings (herein "Motion") is hereby granted in its entirety; it is further

ORDERED that the Debtors are authorized to enter into settlement agreements with the Defendants in any UPH Adversary (as defined in the Motion) where the amount in controversy does not exceed \$150,000 without the necessity of filing a motion pursuant to Rule 9019 of the Bankruptcy Rules.; it is further

ORDERED that the Debtors shall provide five (5) calendar days' notice to the Committee (as defined in the Motion) and Hercules (as defined in the Motion), whose written approval (which may be in the form of an email from respective counsel) before the Debtors may enter into any settlement or compromise of such controversy; it is further

ORDERED that seventy-five percent (75%) of funds received by the Debtors from any compromise shall be paid directly to Hercules subject to confirmation of a plan of reorganization by the Debtors, and the remaining twenty-five percent (25%) of such funds shall be held by the Debtors, subject to any liens or encumbrances held by Hercules with respect to such funds; it is further

ORDERED that in the event the amount in controversy for any UPH Adversary (as defined in the Motion) exceeds \$150,000, the Debtors shall seek authorization and approval from the Bankruptcy Court for each such compromise and settlement upon motion by the Debtors pursuant to Rule 9019 of the Bankruptcy Rules Local Rule 9019(c)(2), and that the Debtors shall provide notice of and the opportunity for a hearing on all such motions to all entities who request notice of such matters.

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