



PUBLIC NOTICE

**Federal Communications Commission
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DA 11-1865

Released: November 7, 2011

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF
PAC-WEST TELECOMM, INC. AND NWIRE, LLC**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 11-173

Comments Due: November 21, 2011

Reply Comments Due: November 28, 2011

On October 14, 2011, UPH Holdings, Inc. (UPH), UPH Acquisition Sub Inc. (UPH-AS), Pac-West Acquisition Company, LLC (PWAC), and Pac-West Telecomm, Inc. (Pac-West) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules¹ to transfer Pac-West, including its U.S.-based wholly-owned subsidiaries, Pac-West Telecomm of Virginia, Inc. and Tex-Link Communications, Inc., as a result of the planned acquisition of 100 percent of the shares of Pac-West by UPH. As part of the proposed transaction, Applicants also request authority to transfer control of nWire, LLC, an indirect subsidiary of UPH, upon the current shareholders in PWAC obtaining an ownership interest in UPH.

Pac-West, a California corporation, provides competitive local exchange carrier (LEC) and long distance telecommunications services in multiple states.² Pac-West Telecomm of Virginia, Inc. provides competitive LEC and long distance telecommunications services in Virginia. Tex-Link Communications, Inc. provides competitive LEC and long distance telecommunications services in Texas. Pac-West is a wholly owned subsidiary of PWAC, a Washington limited liability company that does not provide telecommunications services. PWAC is a wholly owned subsidiary of Columbia Ventures Corporation (CVC), a Washington corporation. Kenneth D. Peterson, Jr., a U.S. citizen, currently owns 100 percent of CVC.³

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214. Applicants have also filed applications for the transfer of control associated with authorization for international services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications. Applicants filed a supplement to their domestic section 214 application on November 2, 2011.

² Pac-West is authorized to provide telecommunications services in Alabama, Arizona, California, Colorado, Delaware, District of Columbia, 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.

³ CVC holds ownership interests in entities that provide competitive domestic and international telecommunications services in the U.S., including Hibernia Atlantic U.S., LLC (formerly known as Columbia Ventures U.S.).

UPH, a Delaware holding company that does not provide telecommunications services, indirectly owns 100 percent of nWire, a Delaware limited liability company that provides competitive LEC and long distance services in Texas, Arkansas, and Oklahoma. Applicants state that J. Michael Holloway, a U.S. citizen, currently holds an indirect 68.08 percent ownership interest in UPH and that, following the proposed transaction, he will hold an indirect 44.58 percent ownership interest in UPH.⁴ UPH-AS, a California corporation, is a wholly owned subsidiary of UPH that does not provide telecommunications services and that was formed for purposes of the transaction. Applicants state that, in addition to Mr. Holloway, the following entities will own 10 percent or more of UPH post-closing: CVC (29.45 percent), and CIT Group/Equity Investments, Inc., a New Jersey corporation (10.22 percent). Applicants state that CIT Group/Equity Investments, Inc. is a wholly owned subsidiary of CIT Group, Inc., a publicly-traded Delaware holding company.

Pursuant to the terms of the proposed transaction, Applicants state that the capital stock of Pac-West will be exchanged for and converted into common stock of UPH. The current shareholders in PWAC, the parent company of Pac-West, will obtain a 29.45 percent ownership interest in UPH. Pac-West will be merged into UPH-AS, a wholly owned subsidiary of UPH, with Pac-West as the surviving entity. Pac-West Telecomm of Virginia, Inc. and Tex-Link Communications, Inc. will continue to operate as wholly owned subsidiaries of Pac-West. As indicated above, Mr. Holloway's ownership interest in UPH will be reduced from 68.08 percent to 44.58 percent. nWire will continue to operate as a wholly owned subsidiary of UPH. Applicants state that, as a result, *de jure* control of nWire will transfer from Mr. Holloway to the general shareholders of UPH. Applicants assert that the proposed transaction is entitled to presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules and that a grant of the application will serve the public interest, convenience, and necessity.⁵

Domestic Section 214 Application Filed for the Transfer of Control of Pac-West Telecomm, Inc. and nWire, LLC, WC Docket No. 11-173 (filed Oct. 14, 2011).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before November 21, 2011**, and reply comments **on or before November 28, 2011**. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.⁶ Comments should be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Acquisition, LLC). Applicants state that, other than through CVC, none of Mr. Peterson's ownership interests in U.S. telecommunications service providers exceeds 10 percent.

⁴ Applicants state that Mr. Holloway is a trustee of the Holloway Family Trust that owns five percent of JMH Partnership LP (JMH), a Texas limited partnership, and the Holloway Family Trust owns 95 percent of JMH. Mr. Holloway is also the general partner of JMH. JMH owns 11.25 percent of UPH and 100 percent of UPTel, LLC, a Texas limited liability company that owns 56.83 percent of UPH. Applicants state that, other than through UPH, none of Mr. Holloway's ownership interests in U.S. telecommunications providers exceeds 10 percent.

⁵ 47 C.F.R. § 63.03(b)(2)(i).

⁶ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) The Commission's duplicating contractor, Best Copy and Printing, Inc., fcc@bcpiweb.com; phone: (202) 488-5300; fax: (202) 488-5563;
- 2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 3) Jodie May, Competition Policy Division, Wireline Competition Bureau, jodie.may@fcc.gov;
- 4) David Krech, Policy Division, International Bureau, david.krech@fcc.gov, and
- 5) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; telephone: (202) 488-5300; fax: (202) 488-5563; e-mail: fcc@bcpiweb.com; url: www.bcpiweb.com.

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For further information, please contact Tracey Wilson at (202) 418-1394 or Jodie May at (202) 418-0913.

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