



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 13-1779
Released: August 20, 2013

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF CERTAIN
ASSETS OF PAC-WEST TELECOMM, INC., TEX-LINK COMMUNICATIONS, INC.,
AND NWIRE, LLC BY TNCI OPERATING COMPANY LLC**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 13-194

Comments Due: September 3, 2013
Reply Comments Due: September 10, 2013

On July 26, 2013, TNCI Operating Company LLC (TNCI), Pac-West Telecomm, Inc. (Pac-West), Tex-Link Communications, Inc. (Tex-Link), and nWire, LLC (nWire), (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules¹ to transfer certain assets of Pac-West, Tex-Link, and nWire to TNCI.

Pac-West, a California corporation, provides competitive telecommunications services primarily on a wholesale basis in Arizona, California, Colorado, Idaho, Nevada, Oregon, Texas, Utah, and Washington. Pac-West is also authorized to provide competitive local exchange (LEC) and interexchange services in these and multiple other states. Pac-West is a wholly owned, direct subsidiary of UPH Holdings, Inc. (UPH), a Delaware corporation. Tex-Link, a Texas corporation, is a wholly owned, direct subsidiary of Pac-West. nWire, a Delaware limited liability company, is a wholly owned, direct subsidiary of UniPoint Holdings, Inc., a Delaware corporation and wholly owned, direct subsidiary of UPH. Tex-Link and nWire provide competitive telecommunications services primarily on a wholesale basis in Texas and are authorized to provide competitive LEC and interexchange services in Texas. nWire is also authorized to provide competitive LEC services in Arkansas and Oklahoma.

TNCI, a Delaware limited liability company, provides competitive telecommunications service throughout the United States. TNCI is a wholly owned subsidiary of TNCI Holdings LLC (TNCI Holdings), a Delaware limited liability company that is indirectly held by Garrison Opportunity Fund II A Holdings MM LLC (GOF-II-A-Holdings) (64.25 percent) and Garrison Opportunity Fund III A Holdings MM LLC (GOF-III-A-Holdings) (35.75 percent) (all U.S. entities).² Joseph Tansey and Steven Stuart,

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214. Applicants also filed an application for 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.

² Applicants note that Mr. Jeffrey Compton, TNCI's President and Chief Executive Officer and a member of its Board of Directors, also serves as Chief Executive Officer and is a co-owner (50%) and Director of Blue Casa Telephone, LLC (Blue Casa), a non-dominant local and long distance provider offering services in California. Mr.

both U.S. citizens, each hold 25 percent of the equity and 50 percent of the voting rights in GOF-II-A-Holdings and GOF-III-A-Holdings.

Pac-West, Tex-link, and nWire have been operating under the protection of the United States Bankruptcy Court for the Western District of Texas (Bankruptcy Court) since March 28, 2013.³ Pursuant to an Asset Purchase Agreement (Agreement), TNCI will acquire certain assets of Pac-West, Tex-Link, and nWire, including their customer accounts, contracts, and telecommunications equipment. Applicants state that all of the affected customers will continue to receive service from TNCI under the same rates, terms, and conditions. The Bankruptcy Court approved the Agreement and the proposed transaction on July 22, 2013. The Agreement provides for an initial closing following receipt of approvals from the Commission and for additional closings at intervals until the final closing date. Pursuant to the Agreement, at each closing Applicants will transfer to TNCI those customer accounts, contracts, and assets for which applicable governmental approvals have been obtained. 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.⁴

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of Pac-West Telecomm, Inc., Tex-Link Communications, Inc., and nWire, LLC by TNCI Operating Company LLC, WC Docket No. 13-194 (filed July 26, 2013).

GENERAL INFORMATION

The transfer of assets 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 September 3, 2013**, and reply comments **on or before September 10, 2013**. Pursuant to section 63.52 of the Commission's rules, 47 C.F.R. § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents in this proceeding using the Commission's Electronic Comment Filing System (ECFS): <http://fjallfoss.fcc.gov/ecfs2/>.

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

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;

Howard Brand, the other co-owner and a Director of Blue Casa, also holds a seat on the Board of TNCI, but is not an officer of TNCI. Although Mr. Compton and Mr. Brand are interlocking directors of the two companies, there is no ownership affiliation between the two entities, and the majority of TNCI's Board was appointed by the Garrison Group.

³ *Pac-West Telecomm, Inc.*, Chapter 11, Case No. 13-10571, U.S. Bank. Court (W.D. Texas); *Tex-Link Communications, Inc.*, Chapter 11, Case No. 13-10572, U.S. Bank. Court (W.D. Texas); *nWire, LLC*, Chapter 11, Case No. 13-10571, U.S. Bankr. Court (W.D. Texas). Applicants state that these cases, along with the Chapter 11 cases of the parent companies and affiliates, are jointly administered under *UPH Holdings, Inc.*, Chapter 11, Case No. 13-10571, U.S. Bankr. Court (W.D. Texas).

⁴ 47 C.F.R. § 63.03(b)(2)(i).

- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) David Krech, Policy Division, International Bureau, david.krech@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

The proceeding in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b), 47 C.F.R. § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

For further information, please contact Myrva Charles at (202) 418-1506 or Dennis Johnson at (202) 418-0809.

- FCC -