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April 17, 2013

RESPONSE TO NOTICE OF OPPORTUNITY TO COMMENT

Via Electronic Submission

Mr. Steve King
WASHINGTON UTILITIES & TRANSPORTATION COMMISSION
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Consolidated Docket No. UT-053036 – Pac-West Complaint
Docket No. UT-053039 – Level 3 Communications Complaint

Dear Mr. King:

On or about March 28, 2013 (“Petition Date”), Pac-West Telecomm, Inc. (“Debtor Pac-West” or “Company”) filed a voluntary petition for relief under title 11 of chapter 11 of the United States Code (“Bankruptcy Code”), in Case No. 13-10571-hcm, in the United States Bankruptcy Court for the Western District of Texas, Austin Division.

On or about April 2, 2013, the United States Bankruptcy Court entered an order approving the joint administration of the Debtor Pac-West’s bankruptcy case with the bankruptcy cases of its affiliates (“Debtors”). The Debtors’ cases have been jointly administered under Case No. 13-10570-tmd; *In re: UPH Holdings, Inc.*¹ The Debtors’ cases are pending and ongoing.

As noted in the Notice of Suggestion of Bankruptcy filed by the Debtor Pac-West, the filing of the petition imposes an automatic stay pursuant to 11 U.S.C. § 362 that prohibits any act to collect any prepetition debt or claim or any act to exercise control over property of the estate, including any administrative law proceedings.

¹ The Debtors include UPH Holdings, Inc. (“UPH”); case no. 13-10570, Pac-West Telecom, Inc., (“Pac-West”); case no. 13-10571, Tex-Link Communications, Inc. (“Tex-Link”); case no. 13-10572, UniPoint Holdings, Inc. (“UniPoint Holdings”); case no. 13-10573, UniPoint Enhanced Services, Inc. (“UniPoint Enhanced”); 13-10574, UniPoint Services, Inc., (“UniPoint”); case no. 13-10575, nWire, LLC (“nWire”); case no. 13-10576, and Peering Partners Communications, LLC (“Peering Partners”); case no. 13-10577.

On April 12, 2013, the Commission issued its Notice of Opportunity to Comment, seeking comments from all parties on the potential or actual impact of the Debtor Pac-West's voluntary bankruptcy petition, and specifically, whether the Debtor Pac-West's bankruptcy filing prevents the Commission from issuing a final order in this proceeding and what actions the Commission may take in this docket.

In this proceeding, Qwest Corporation ("Qwest") is seeking a money judgment to be entered against the Debtor Pac-West on its claims against the Debtor Pac-West. To the extent that Qwest is seeking a money judgment against the Debtor Pac-West, the portion of this proceeding that seeks to enforce judgment entered against the Debtor Pac-West is stayed in its entirety. *See* 11 U.S.C. § 362.

The recently issued Fifth Circuit opinion of *In the Matter of Halo Wireless, Inc.*, 684 F.3d 581 (5th Cir. 2012), provide the controlling authority for the Debtor Pac-West's bankruptcy case on this issue. In *Halo Wireless*, the Fifth Circuit mandates that actions in which a party seeks to enforce a money judgment against a debtor are stayed by the automatic stay. *Id.* at 585. The Fifth Circuit in *Halo Wireless* addressed § 362(b)(4) of the Bankruptcy Code. Section 362(b)(4) of the Bankruptcy Code provides an exception from the automatic stay for proceedings "by a governmental unit or any organization . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C. § 362(b)(4).

In *Halo Wireless*, the Fifth Circuit considered whether proceedings before ten state public utility commissions ("PUCs") to adjudicate whether the debtor was a CMRS provider or was required to enter into interconnection agreements and be subject to access charges were excepted from the automatic stay under § 362(b)(4). *Id.* There, the Fifth Circuit remarked that the plaintiffs were not primarily seeking to protect a pecuniary governmental interest in the debtor's property via the proceedings in the PUCs, as opposed to protecting public safety and health because the issue went the characterization of the debtors traffic and had broad regulatory effect. *Id.* at 593-94. More simply put, the Fifth Circuit observed that the PUC proceedings at issue would not give the plaintiffs access to the debtor's property because it feel within the province of the PUCs to determine what kind of carrier the debtor was. *Id.* That finding led to the holding that the automatic stay did not apply, that the proceedings fell under the exception in § 362(b)(4), and that the proceedings could continue in their entirety. *Id.* at 595.

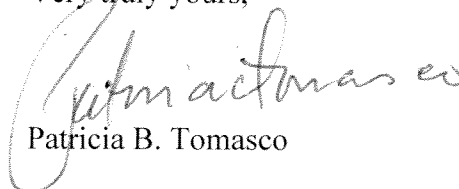
Other courts have approached the issue in the same way as the Fifth Circuit in *Halo Wireless*. *See, e.g., N.L.R.B. v. P*I*E* Nationwide, Inc.*, 923 F.2d 506, 512 (7th Cir. 1990); *Solis v. Caro*, No. 11 C 6884, 2012 WL 1230824, *5 (N.D. Ill. April 12, 2012) (holding that because the proceeding did not "attempt to satisfy a debt outside of the bankruptcy process," the proceeding was not stayed by the automatic stay).

Accordingly, under the rule in *Halo Wireless* and pursuant to the authorities herein discussed, the automatic stay applies to the actions by Qwest to liquidate and enforce any judgment against the Debtor Pac-West. Qwest's efforts in this proceeding could provide Qwest a route to access the Debtor Pac-West's property, because as discussed, Qwest is seeking a money judgment against the Debtor Pac-West in these proceedings. There is no regulatory component here because the proceedings seek a refund arising out of the remand of a prior compensation award to the Debtor Pac-West for which there is no prospective effect nor impact on other regulated entities. Accordingly, under binding Fifth Circuit precedent, the Commission may take no action to enforce Qwest's claims against the Debtor Pac-West.

Qwest's claims, once determined, will have no prospective effect on the Debtor Pac-West's ongoing business, but will be subject to the priority scheme of the Bankruptcy Code. At this juncture, the case is too new to determine what dividend if any will be distributable to unsecured claims such as the claim sought by Qwest as a result of this case. In some cases, unsecured creditors receive nothing for their claims. Spending significant amounts of resources to determine the amount of a claim that will not be paid or will not be paid a significant dividend is like rearranging deck chairs on the Titanic. One of the purposes of the automatic stay is to provide debtors with a breathing spell during which management can devote itself to the reorganization process.

The Debtor Pac-West therefore requests that, whether or not the automatic stay applies, the instant proceedings be abated for 6 months during which time the significance of any outcome can be gauged, and further allowing for the Debtors to devote their efforts towards reorganizing.

Very truly yours,



Patricia B. Tomasco

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