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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: _____ : Chapter 11
: Case No. 07 - 10562 (BLS)
PAC-WEST TELECOMM, INC., *et al.*,¹ :
: (Jointly Administered)
Debtors and Debtors in Possession. :
_____ : Related to Docket No. _____

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
UNDER 11 U.S.C. § 1129(a) AND (b) AND FED. R. BANKR. P. 3020
CONFIRMING THE FINAL MODIFIED SECOND AMENDED JOINT PLAN
OF REORGANIZATION OF PAC-WEST TELECOMM, INC. AND ITS
DEBTOR AFFILIATES (WITH TECHNICAL AMENDMENTS)**

This matter is before the Court for entry of an order confirming the *Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates (With Technical Amendments)* [Docket No. 708] (together with all exhibits and schedules thereto and the Plan Documents filed with the Court, the "Plan"), dated November 19, 2007, filed by Pac-West Telecomm, Inc. and the other above-captioned debtors and debtors in possession (collectively, the "Debtors"). On September 6, 2007, the Court approved the *Disclosure Statement Accompanying the Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* (the "Disclosure Statement").² Based upon this Court's review of (i) the *Debtors' Brief in Support of Confirmation of the Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 712] (the "Confirmation Brief"), filed on November 16, 2007; (ii) the *Affidavit of Kurtzman Carson Consultants LLC Certifying Ballots Accepting and Rejecting the*

¹ The Debtors are the following entities: Pac-West Telecomm, Inc., PWT of New York, Inc., PWT Services, Inc., Pac-West Telecomm of Virginia, Inc., Installnet, Inc., and U.S. Net Solutions, Inc.

² Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Plan or the Disclosure Statement.

Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates [Docket No. 645] (the "Voting Affidavit") with a "Ballot Tabulation Report" attached thereto as Exhibit A , filed on October 24, 2007; (iii) the *Declaration of Michael Katzenstein in Support of Confirmation of the Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 714] (the "Katzenstein Declaration"), filed on November 16, 2007; (iv) the Cure Amount Stipulations and the Adequate Assurance Agreements (each as defined herein); (v) certain documents comprising the Plan Documents filed by the Debtors and by the Committee on September 28, 2007 and November 16, 2007; (vi) the *Statement of the Official Committee of Unsecured Creditors in Support of Confirmation of the Final Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 717] (the "Committee Statement"), filed by the Official Committee of Unsecured Creditors (the "Committee") on November 16, 2007, and the statements of the Committee made in support of the Plan; (vii) the *Debtors' Omnibus Response to Objections Filed in Response to the Modified Second Amended Joint Plan of Reorganization of Pac-West Telecomm, Inc. and its Debtor Affiliates* [Docket No. 618], filed on October 18, 2007; (viii) all of the evidence proffered or adduced at, objections filed in connection with, and arguments of counsel made at, the Confirmation Hearing (as defined below); and (ix) the entire record of these Cases; and after due deliberation thereon and good cause appearing therefore, this Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Order:³

THE COURT FINDS AND CONCLUDES:

³ This Confirmation Order constitutes this Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Bankruptcy Rules 7052 and 9014. Any and all findings of fact shall constitute findings of fact even if they are stated as conclusions of law, and any and all conclusions of law shall constitute conclusions of law even if they are stated as findings of fact.

interests in and to the Collateral, subject only, where applicable, to the liens and security interests specified or permitted under the Exit Financing Agreements, the Plan, and this Confirmation Order. On the Effective Date, all of the liens and security interests to be created under, or in connection with, the Exit Financing Agreements shall be deemed created and shall be valid and perfected without any requirement of filing or recording of financing statements, mortgages or other evidence of such liens and security and without any approvals or consents from governmental entities or any other persons and regardless of whether or not there are any errors, deficiencies or omissions in any property descriptions attached to any filings and no further act shall be required for the perfection of such liens and security interests.

HH. **The Class 4 Liquidating Trust.** Entry into the Class 4 Liquidating Trust is in the best interests of the Reorganized Debtors and their Creditors, and the Class 4 Liquidating Trust and the Class 4 Liquidating Trustee shall be vested with the rights and duties set forth in Article XVII of the Plan and the Class 4 Liquidating Trust Agreement.

II. **Approval of Settlements and Compromises.** Pursuant to Bankruptcy Rule 9019 and any applicable State law, and as consideration for the distributions and other benefits provided under the Plan, all settlements and compromises of Claims, causes of action, and objections to Claims that are embodied in the Plan, constitute a good faith compromise and settlement of any Claims, causes of action, and objections to Claims, which compromises and settlements are hereby approved as fair, equitable, reasonable, and appropriate in light of the relevant facts and circumstances underlying such compromise and settlement, and are in the best interests of the Debtors and their Estates and Creditors.

JJ. **Releases and Discharges.** The releases and discharges of Claims and causes of action described in Article XII of the Plan and this Confirmation Order constitute good faith

compromises and settlements of the matters covered thereby and are consensual. Such compromises and settlements are made in exchange for adequate consideration and are in the best interest of Holders of Claims, are fair, necessary, equitable, and reasonable, and are integral elements of the resolution of the Cases in accordance with the Plan. Each of the discharge, release, indemnification and exculpation provisions set forth in the Plan and this Confirmation Order is: (i) within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (ii) an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code; (iii) an integral element of the transactions incorporated into the Plan; (iv) conferring material benefit on, and is in the best interests of, the Debtors, their estates and their creditors; (v) important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Cases with respect to the Debtors; and (vi) consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.

KK. Satisfaction of Conditions to Confirmation. Each of the conditions precedent to the entry of this Confirmation Order, as set forth in Article XIII of the Plan has been satisfied or waived in accordance with the Plan, or will be satisfied by entry of this Confirmation Order.

LL. Likelihood of Satisfaction of Conditions Precedent to Consummation. Based on the evidence proffered or adduced at, or prior to, or in declarations filed in connection with the Confirmation Hearing, including the Katzenstein Declaration, and all other related pleadings, exhibits and other relevant documents, each of the conditions precedent to the Effective Date, as set forth in Article XIII of the Plan, is reasonably likely to be satisfied.

MM. Tranche A Earn Out Note and the Tranche B Earn Out Note. The Tranche A Earn Out Note and the Tranche B Earn Out Note (the "Earn Out Notes") have been negotiated in good faith and are essential elements of the Plan and the issuance of the Earn Out Notes in

execute and to deliver the Plan Documents, the Merrill Lynch Note, and any other agreements, documents and instruments contemplated by the Plan or the Plan Documents in the name and on behalf of Reorganized Debtors.

PP. **Authorization of Exit Financing Facility.** The Reorganized Debtors and the Exit Lender are authorized to execute the Exit Financing Agreements, including the Exit Loan Agreement and the New Senior Secured Note, together with all other agreements, documents, and instruments executed and/or delivered in connection therewith or related thereto and to perform their obligations under the Exit Loan Agreement without further approval of the board of directors of the Debtors or any other Person. The Reorganized Debtors are hereby authorized to grant to the lender under the Exit Financing Agreements valid, binding and enforceable and perfected security interests in and liens upon all Collateral (as such term is defined in the Exit Financing Agreements) to secure all of the obligations under or in connection with the Exit Financing Agreements in accordance with the terms thereof.

QQ. **Preservation of Rights of Action.** It is in the best interests of Creditors that all Rights of Action, including the Avoidance Rights of Action and the VeriSign Rights of Action, are to be retained by the Reorganized Debtors or the Class 4 Liquidating Trust as provided for in Article X of the Plan.

RR. **The Committee.** The Committee has fully acquitted its fiduciary duty to all general unsecured creditors.

SS. **Retention of Jurisdiction.** This Court may retain jurisdiction over the matters set forth in Article XIV of the Plan.

THE COURT HEREBY ORDERS:

1. **Confirmation of the Plan.** The Plan, substantially in the form as amended through the date hereof, and each of its provisions are confirmed in each and every respect

pursuant to section 1129 of the Bankruptcy Code. The terms of the Plan, including all exhibits thereto and the Plan Documents, the Cure Amount Stipulations, and the Adequate Assurance Agreement are incorporated by reference into, and are an integral part of, this Confirmation Order. The terms of the Plan, including all exhibits thereto and the Plan Documents, and all other relevant and necessary documents, shall be effective and binding as of the Effective Date of the Plan. Notwithstanding the foregoing, if there is any direct conflict between the terms of the Plan or and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. The Plan and this Confirmation Order shall supersede any orders of this Court issued prior to the Effective Date that are inconsistent herewith.

2. **Objections.** All objections and responses to and statements and comments regarding the Plan, to the extent not already withdrawn, waived, or settled, and all reservation of rights included therein, shall be, and hereby are, overruled.

3. **Plan Modifications.** All modifications or amendments to the Plan since the solicitation, as embodied in the form of the Plan filed November 19, 2007, or otherwise filed with the Court or disclosed in open court at or prior to the Confirmation Hearing (to the extent not withdrawn), are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3016.

4. **Plan Classification Controlling.** The terms of the Plan shall solely govern the classification of Claims and Interests for purposes of the distributions to be made thereunder. The classifications set forth on the Ballots and Master Ballots tendered to or returned by the Debtors' Creditors in connection with voting on the Plan: (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims

amended, and applicable state and local laws requiring registration of securities. The interests of such Holders in distributions from the Class 4 Liquidating Trust shall be exempt from registration under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 because: (i) the beneficial interests in the Class 4 Liquidating Trust will not be represented by certificates; (ii) the Class 4 Liquidating Trust exists for the sole purpose of liquidating and distributing its assets; (iii) the Class 4 Liquidating Trust shall only exist for the period of time necessary to liquidate and distribute its assets; (iv) the Class 4 Liquidating Trust will issue annual unaudited financial statements to Holders of Allowed Class 4 Unsecured Claims; (v) the Bankruptcy Court shall have continuing jurisdiction over all matters related to the Class 4 Liquidating Trust; and (vi) the interests in the Class 4 Liquidating Trust will not be transferable, except with respect to a transfer by will or under the laws of descent and distribution, as set forth in the Class 4 Liquidating Trust Agreement.

12. **Immediate Effectiveness; Successors and Assigns.** Notwithstanding Bankruptcy Rules 3020(e), 6004(g), 7062, 8001, 8002 or otherwise, immediately upon the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order shall be, and hereby are, immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, the Class 4 Liquidating Trustee, the Class 4 Liquidating Trust, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are Impaired under the Plan or whether the Holders of such Claims or Interests accepted, were deemed to have accepted, rejected or were deemed to have rejected the Plan), all Persons that are party to or subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan or herein, each Person acquiring property under the Plan, and any and all non-Debtor parties to executory contracts and unexpired leases with the Debtors and the

respective heirs, executors, administrators, successors or assigns, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians, if any, of any of the foregoing.

13. **Limited Substantive Consolidation.** The limited substantive consolidation of the Cases as set forth in Section 7.4 of the Plan and in ¶ CC hereof is approved in its entirety solely for the purposes of voting on the Plan, confirmation thereof and distributions in effectuation thereof.

14. **Continued Corporate Existence; Vesting of Assets in the Reorganized Debtors.** On and after the Effective Date, Reorganized Pac-West, Reorganized PW Virginia, Reorganized PWT of New York, Inc., Reorganized PWT Services, Inc., Reorganized Installnet, Inc., and Reorganized U.S. Net Solutions, Inc., shall remain in existence, and shall retain their assets on the terms and conditions of the Plan and this Confirmation Order, including the retention of assets as set forth in Paragraph 22 of this Confirmation Order.

15. **Cancellation of Existing Securities.** On the Effective Date, except to the extent otherwise provided in the Plan, the Existing Securities shall be cancelled and the obligations of the Debtors thereunder or in any way related thereto shall be discharged.

16. **Cancellation of the Prepetition Notes.** On the Effective Date, except to the extent otherwise provided in the Plan, the Prepetition Notes shall be cancelled and the Prepetition Notes Indentures shall be deemed to be cancelled, provided, however, that the Prepetition Notes Indentures shall continue in effect to the extent necessary to allow the respective Prepetition Notes Trustees to (i) receive and make distributions pursuant to the Plan, or to otherwise act as trustee, paying agent, or registrar, (ii) exercise their respective charging liens against any such distributions and rights relating to payment of fees, expenses, and indemnifiable obligations solely from property or cash distributed under the Plan to such

Prosecution Advance; (d) the right to certain Net Proceeds of the VeriSign Rights of Action as set forth in the Plan; and (e) the right to receive the Guaranteed Class 4 Payment. Such transfers are exempt from any stamp, real estate transfer, mortgage reporting, sales, use, or other similar tax and shall be free and clear of any Liens, Claims, interests, and encumbrances, and no other entity, including the Debtors or Reorganized Debtors, shall have any interest, legal, beneficial, or otherwise, in the Class 4 Liquidating Trust or the Class 4 Liquidating Trust Assets upon their assignment and transfer to the Class 4 Liquidating Trust (other than as expressly provided in the Plan or in the Class 4 Liquidating Trust Agreement). The Class 4 Liquidating Trustee is hereby authorized, on behalf of the Debtors and Reorganized Debtors and their Estates, but subject to Section 10.1.1 of the Plan, to pursue all Avoidance Rights of Action that are not waived or released pursuant to the Plan.

28. **Discharge, Releases, Exculpation, and Indemnification Obligations.** The discharge of the Debtors and any of their assets or properties provided in Section 11.1 of the Plan, the releases set forth in Section 12.1 of the Plan, and the exculpation and limitation of liability provisions set forth in Section 12.3 of the Plan, and the indemnification obligations set forth in Section 12.4 of the Plan, are deemed incorporated in this Confirmation Order as if set forth in full herein and are hereby approved in their entirety. The rights afforded under the Plan and the Confirmation Order and the treatment of Claims and Interests thereunder shall be in exchange for, and in complete satisfaction, discharge, and release of, all Claims and satisfaction or termination of all Interests, including any interest accrued on Claims from and after the Petition Date. Except as otherwise expressly provided in the Plan or this Confirmation Order, upon the occurrence of the Effective Date, the Debtors shall be discharged, effective immediately, from any Claim and any "debt" (as that term is defined in section 101(12) of the Bankruptcy Code),

and the Debtors' liability in respect thereof shall be extinguished completely, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown, that arose from any agreement of the Debtors entered into or obligation of the Debtors incurred before the Confirmation Date, or from any conduct of the Debtors prior to the Confirmation Date, or that otherwise arose before the Confirmation Date, including, without limitation, all interest accrued and expenses incurred, if any, on any such debts, whether such interest accrued or such expenses were incurred before or after the Petition Date, and including, without limitation, any liability of a kind specified in Bankruptcy Code section 502(g), 502(h) and 502(i), whether or not a proof of claim was filed or is deemed filed under Bankruptcy Code section 501, such Claim is allowed under Bankruptcy Code section 502 or the Person holding such Claim has accepted the Plan. The discharge granted hereunder shall void any judgment obtained against the Debtors or Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim.

29. **Injunctions and Stays.** Except as otherwise specifically provided in the Plan or this Confirmation Order and except as may be necessary to enforce or remedy a breach of the Plan and the Plan Documents, from and after the Effective Date, all Persons are permanently enjoined from, and restrained against, commencing or continuing in any court any suit, action, or other proceeding, or otherwise asserting any claim or interest, seeking to hold (a) Reorganized Debtors, (b) the property of Reorganized Debtors, (c) the Class 4 Liquidating Trust, (d) the Class 4 Liquidating Trustee, (e) the property of the Class 4 Liquidating Trust, including, without limitation, the Class 4 Liquidating Trust Assets, or (f) any of the Releasees, liable for any claim, obligation, right, interest, debt or liability that has been discharged or released pursuant to

Sections 11.1 or 12.1 of the Plan. The satisfaction, release, and discharge granted pursuant to the Plan and this Confirmation Order shall also act as an injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or cause of action satisfied, released, or discharged under the Plan and this Confirmation Order to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 thereof. Subject to the discharge granted under Bankruptcy Code sections 524 and 1141, the injunction described herein shall not preclude police, federal tax, or regulatory agencies from fulfilling their statutory duties to the extent permitted under section 362(b) of the Bankruptcy Code. Notwithstanding any provision of this Order, all rights of recoupment or setoff held by Qwest Corporation or Qwest Communications Corporation shall be governed by that certain *Stipulation by and among Qwest Corporation, Qwest Communications Corporations and the Debtors and Order (I) Granting Relief from the Automatic Stay to Pursue Prepetition Litigation Pending in Arizona, Washington, and Colorado, and (II) Preserving Rights of Setoff and Recoupment* entered on October 11, 2007 [Docket No. 598].


30. **The Automatic Stay.** The stay in effect in the Cases pursuant to sections 105 or 362(a) of the Bankruptcy Code shall continue to be in effect until the Effective Date, and at that time shall be dissolved and of no further force or effect, subject to the injunctions set forth in Paragraph 29 hereof and/or sections 524 and 1141 of the Bankruptcy Code; provided, however, that nothing herein shall bar the filing of financing documents (including uniform commercial code financing statements, security agreements, leases, mortgages, trust agreements, bills of sale, and applications for vessel registration) or the taking of such other actions as are necessary to

45. **Retention of Jurisdiction.** Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and sections 157 and 1334 of title 28 of the United States Code, notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain (a) exclusive jurisdiction after the Effective Date over all matters arising out of or related to the Cases, the Plan, this Confirmation Order, or any related agreements and documents including, without limitation, the Plan Documents; and (b) jurisdiction over Rights of Action after the Effective Date, as legally permissible, on the terms set forth in Article XIV of the Plan.

46. **Payment of Statutory Fees.** All fees payable pursuant to section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable, but prior to the closing of the Cases, with respect to any such fees payable after the Effective Date.

47. **Final Order.** This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: Wilmington, Delaware
November 19, 2007


THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE