



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION )  
OF UPH HOLDINGS, INC., UPH ACQUISITION SUB ) ORDER  
INC., PAC-WEST ACQUISITION COMPANY, LLC, AND )  
PAC-WEST TELECOMM, INC. FOR CONSENT TO )  
TRANSFER CONTROL OF PAC-WEST TELECOMM, )  
INC. ) DOCKET NO. TM11110803

Parties of Record:

**Darah S. Franklin, Esq., Wiltshire & Grannis LLP**, on behalf of Petitioners  
**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

BY THE BOARD:

On November 23, 2011, UPH Holdings, Inc. ("UPH"), UPH Acquisition Sub Inc ("UPH-AS"), Pac-West Acquisition Company, LLC ("PWAC"), and Pac-West Telecomm, Inc. ("Pac-West" and together with UPH, UPH-AS, and PWAC, "Petitioners") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and 48:3-10 requesting approval to consummate a transaction that will result in the transfer of control of Pac-West to UPH ("Transaction"). Following the transfer, Pac-West will continue to offer services at the same terms, rates and conditions on which it currently offers such services in the state.

**BACKGROUND**

UPH is a corporation formed under the laws of the State of Delaware with its headquarters in Austin, Texas. According to the petition, UPH is a privately held, non-operating holding company with investments in companies operating in the data and voice communications industries. UPH has one indirect subsidiary that holds authorization to provide telecommunications services, nWire Communications, LLC ("nWire"). nWire is authorized in Texas, Arkansas and Oklahoma. As a result of the Transaction, nWire will be a sister company to Pac-West. UPH-AS is a California corporation and a wholly owned subsidiary of UPH that was formed for the purposes of this merger.

Pac-West is a California corporation headquartered in Stockton, California. According to the petition, Pac-West currently offers all forms of telecommunications, including: local and long distance origination and termination, switched and special access, 8YY originating access and 8YY services, managed modem and collection services. Pac-West is certified to provide telecommunications services in 31 states and the District of Columbia. In New Jersey, Pac-West was granted authority to provide local exchange and interexchange telecommunications services on December 2, 2005. See Order, I/M/O the Petition of Pac-West Telecomm, Inc. for Authority to Provide Facilities Based Local Exchange Services and Inter-Exchange Telecommunications Services Throughout New Jersey, Docket No. TE05090779. Also, in New Jersey, Pac-West currently has 13 wholesale customers, and 2 employees. Pac-West is a wholly-owned subsidiary of PWAC, a limited liability company formed under the laws of the State of Washington, with a principal place of business located in Vancouver, Washington. PWAC in turn is a wholly owned subsidiary of Columbia Ventures Corporation, a privately owned Washington corporation, with its principal place of business also located in Vancouver, Washington. PWAC does not hold any authorizations to provide telecommunications services.

By letter dated December 16, 2011, the Division of Rate Counsel advised that it does not object to Board approval of the petition.

## **DISCUSSION**

According to the petition, pursuant to a reorganization Agreement dated August 30, 2011 (Agreement”), by and among UPH, UPH-AS, PWAC, and Pac-West, the following will occur at the closing of the Transaction. The issued and outstanding capital stock of Pac-West will be exchanged for, and converted into, common stock of UPH. PWAC, the parent company of Pac-West, thereby will obtain 29% 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. Petitioners state that Pac-West’s customers will continue to receive their existing services at the same rates, terms and conditions that they have prior to the transfer and, therefore, the transaction will be seamless and transparent to customers. Petitioners have also represented that the transaction will not have any adverse impact on employment in New Jersey.

Petitioners assert that the transaction described herein will serve the public interest. The financial, technical, and managerial resources that UPH will bring to Pac-West will enhance Pac-West’s ability to compete in the telecommunications and information marketplace.

In evaluating this petition, the Board must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c). Finally, regarding N.J.S.A. 48:3-10, the Board must determine whether “it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligations to any employees thereof with respect to pension benefits previously enjoyed . . .”

## **FINDINGS AND CONCLUSIONS**


After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since Pac-West’s New Jersey customers will continue to receive the same services from the same entities at the same rates and under the same terms and conditions; nor will there be a negative impact on employees.

Moreover, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen Pac-West's competitive posture in the telecommunications market due to its access to additional resources. Finally, there are no apparent issues regarding obligations to any employees.

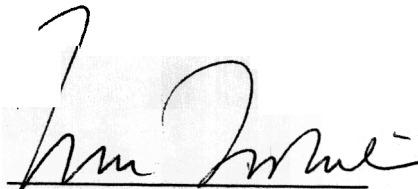
The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. The Board FURTHER ORDERS that this approval will expire if the transaction is not fully consummated on or before January 31, 2013.

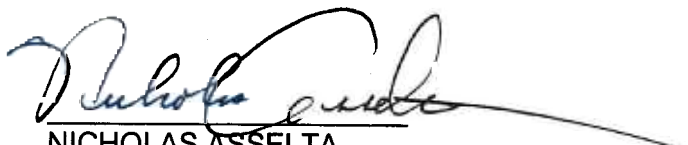
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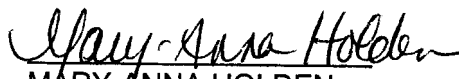
BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

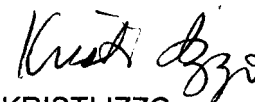
  
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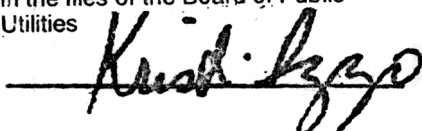
  
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MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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