

05-00314

Pac-West

July 24, 2007

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JUL 26 2007

Sharla Dillon
Dockets and Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

TN REGULATORY AUTHORITY
UTILITIES DIVISION

Re: Pac-West Telecomm, Inc. - Discontinuance of all Telecommunications Services

Dear Ms. Dillon:

Pac-West Telecomm, Inc. ("Pac-West") hereby notifies the Tennessee Regulatory Authority of the planned discontinuance of all telecommunications service to customers in Tennessee. This discontinuance is being undertaken as part of Pac-West's bankruptcy reorganization¹

On April 30, 2007, Pac-West filed for protection under Chapter 11 of the U.S. Bankruptcy Laws in the U.S. Bankruptcy Court for the District of Delaware.² As part of the bankruptcy, Pac-West has been working diligently to improve its profitability and to reduce costs and unnecessary obligations to return the company to its historical profitability. Pac-West has collaborated closely with its creditors, carriers, vendors, and its debtor-in-possession ("DIP") lender to explore its options. We have concluded that the markets served by Pac-West's eastern network, which includes Tennessee, are likely to continue to operate at a substantial loss for the foreseeable future and that these losses are unsustainable. We are dependent on financing provided by our DIP lender and the lender has informed us that it does not support the continued financing of losses incurred in the eastern markets. The DIP lender is very likely to condition advances on the DIP loan on Pac-West's rapidly eliminating the cash losses from the eastern network and to hold Pac-West to a funding budget that makes no room for funding the eastern network. Moreover, parties with whom Pac-West has had discussions regarding purchasing the assets of Pac-West or funding a plan of reorganization have all made clear that such transactions would not include the eastern network because of the losses it is incurring. Regrettably, after much consideration Pac-West has determined that exiting the "eastern" regional footprint is essential to Pac-West's ability to successfully reorganize.

¹ To the extent necessary, Pac-West requests that the Authority consider this letter to be an application and expeditiously approve the planned discontinuance consistent with the time frame outlined herein.

² *In re PAC-WEST TELECOMM, INC., et al.*, Chapter 11 Case No. 07-10562 (BLS) (Bankr. Dist. Del.).

Pac-West has therefore decided to discontinue all telecommunications services provided to customers in the 25-state/jurisdiction region,³ including those located in Tennessee. It has become clear to Pac-West and our DIP lender that the eastern region business is not able to become profitable. Unfortunately Pac-West was not able to gain the business volumes and revenues needed to support these eastern markets even with our competitive customer pricing and quality services. This has put at risk the continued availability of financing for operations in these markets and could place the Company in jeopardy of a precipitous disruption of service to customers in the eastern region that includes Tennessee.

Simply put, if Pac-West continues to try to provide service to both the eastern and western regions we will be unable to successfully reorganize and emerge from bankruptcy. This risks a discontinuance of service to all of our customers in all locations, and would also contravene Pac-West's obligation in bankruptcy to protect the value of the business for its creditors .

Regrettably, therefore, the choices Pac-West has are few. In order to continue to serve the majority of customers and be able to successfully emerge from bankruptcy, we have decided to exit markets served by a costly network where traffic and customer counts are low and revenues do not cover costs. This is a difficult decision and we do not leave these markets or our customers lightly.⁴ In our view, however, it has been critical to face up to the reality quickly because we cannot assure the continued availability of financing for the operations in the eastern region. Taking the initiative, and not waiting for a precipitous action by a third party, will maximize as much as possible the amount of notice that we can provide our eastern region customers and thereby minimize the risk of a service disruption.

A. Information Regarding Discontinuance

1. Name, address, and brief description of carrier

Pac-West Telecomm, Inc.
4210 Coronado Avenue
Stockton, CA 95204

³ The 25 "eastern region" jurisdictions include: Alabama, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wisconsin (collectively, the "Exit Markets").

⁴ While we still believe in the market potential of the eastern region for us, our business in those markets is at an early stage of development and would require substantial continued investment that we are simply not in a position to make at this time. Nevertheless, we are hopeful that following our reorganization we will again be in a position to expand the business and, therefore, are not requesting that the Authority cancel our certificate at this time.

In Tennessee, Pac-West is authorized to provide local exchange and facilities-based and resold interexchange telecommunications services pursuant to authority granted by the Authority in Docket No. 05-00314 on January 11, 2006.

Pac-West's toll-free customer service telephone number for customer inquiries concerning the discontinuance is 1-877-626-4325. The DIP lender has stated that its willingness to continue funding Pac-West's cash requirements is conditional on exiting from these markets and with its satisfaction with the progress being made to effect the exit. The speed with which customers migrate off Pac-West's network is beyond Pac-West's control.

2. Date of planned service discontinuance

The anticipated date for the discontinuance of service is on or about August 23, 2007.⁵ However, because Pac-West no longer has assurance for funding for the Exit Markets, Pac-West cannot guarantee that it will have funding available be able to continue service through that date. Pac-West, therefore, has stressed to its customers the need to promptly select a new service provider and make appropriate arrangements to move their services to that provider.

3. Number and Types of customers affected

Pac-West will discontinue all services provided to approximately 26 customers in Tennessee. These customers are sophisticated service provider customers such as Internet service providers and enhanced service providers, including VoIP providers. Pac-West does not serve any end user customers in Tennessee. A list of affected service provider customers will be provided *under seal* upon request.

The affected service providers tend to use multiple and redundant underlying carriers for their telecommunications services. Virtually all of Pac-West's contracts with the customers expressly allow Pac-West to eliminate a market or region from its geographic service footprint on thirty (30) days' notice, and Pac-West expects that they understood and can comply with that notice period. Pac-West will be working with all of its customers to facilitate their transition of service, and in particular is reaching out to the two (2) customers with 60-day termination clauses in their contracts to be sure that they know they must move their service more rapidly than contemplated in the contracts.

⁵ To the extent Authority rules require a longer notice period, Pac-West submits that the circumstances set forth in section 3 demonstrate that a 30 day notice is adequate for the types of services involved and given its bankruptcy status, Pac-West cannot continue to provide the services beyond 30 days and, therefore, requests waiver of those requirements.

4. Brief description of the type of service affected

Pac-West's customers purchase telecommunications services from Pac-West and incorporate those services in products that they provide to their end users. Such Pac-West services include, without limitation inbound and outbound customer PSTN access, foreign exchange, and managed modem services (together and separately, the "Services").

5. Brief description of the dates and methods of notice to all affected customers

Written notice to all of Pac-West's customers, substantially in the form of the sample letters attached as Attachments A and B, was mailed on July 24, 2007. The sample customer notice letter provided in Attachment A contains the information required by Section 63.71(a) of the FCC's Rules. The sample customer notice letter provided in Attachment B was sent pursuant to the Master Services Agreement to formally notify customers that Pac-West is exercising its contractual right to discontinue service in 30 days. Both letters were sent to all customers other than the customers in the eastern region who received a version of the letter provided in Attachment C modified to reflect their 60-day notice period under their respective Master Services Agreements.

6. Ongoing Efforts to Provide for Continuity of Service

To the extent possible, Pac-West will work with new carriers selected by its customers to effectuate the transition to those new carriers' networks. Pac-West will also make available to its affected customers information on assigned telephone numbers and other information that the customers or their replacement carriers may wish to use to effect a rapid migration. To that end, Pac-West has sent the letter provided as Attachment C to the Number Portability Administration Center c/o Neustar ("NPAC") (1) asking the NPAC process number porting orders affecting services in the Exit Markets as expeditiously as possible and (2) providing Pac-West's pre-approval for any validly submitted order or request to port a number currently assigned to Pac-West. Finally, Pac-West will be contacting the incumbent local exchange carriers and other prominent carriers in the Exit Market to solicit their cooperation with Pac-West's customers affected by this action and the replacement carriers that they choose.

As stated above, the vast majority of Pac-West's services are wholesale in nature and its customers are primarily Internet service providers and other sophisticated telecommunications customers who will understand the urgency of the notices and are able to migrate their service promptly. In fact, many of Pac-West's ISP customers already utilize the same or functionally equivalent services provided by other carriers and routinely route their traffic on a dynamic basis to multiple carriers daily. Pac-West's notice letter has clearly emphasized the imperative that customers take immediate steps to migrate their services within 30 days.

7. Additional questions regarding this filing may be addressed to:

Ethan Sprague
Vice President, Regulatory Affairs
Pac-West Telecomm, Inc.
4210 Coronado Avenue
Stockton, CA 95204
Tel: 209-926-3416
Fax: 209-926-4105
Email: esprague@pacwest.com

and

Jean L. Kiddoo
Brett Ferenchak
Bingham McCutchen LLP
2020 K Street, N.W., Suite 1100
Washington, DC 20006
Tel: (202) 373-6000
Fax: (202) 373-6001
Email: jean.kiddoo@bingham.com
brett.ferenchak@bingham.com

8. Circumstances of Discontinuance

As described more fully on pages 1-2 *supra*, on April 30, 2007, Pac-West filed for protection under Chapter 11 of the U.S. Bankruptcy Laws in the U.S. Bankruptcy Court for the District of Delaware.⁶ As part of the Chapter 11 proceedings, Pac-West is applying to the Bankruptcy Court for approval to reject contracts for services in the Exit Markets. Further, continued availability of financing for Pac-West's operations in the Exit Markets is not assured, which could jeopardize Pac-West's ability to continue to provide service during the Chapter 11 proceedings. Notwithstanding the financial situation that might otherwise warrant immediate cessation of operations in a bankruptcy proceeding, Pac-West recognizes that it has obligations under federal and state regulations to provide notice to their customers of the pending discontinuance so that the customers have an opportunity to transfer services to another carrier without interruption. To comply as much as possible with these obligations, Pac-West is proposing to the Bankruptcy Court that it discontinue service to the Exit Markets no later than 30 days after the date of the notice to customers (recognizing that there is no assurance that it will have continued financing for operations in the Exit Markets even for this period), rather than immediately.

⁶

Pac-West provided the Authority notice of the Chapter 11 filing shortly thereafter.

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9. Public Interest Considerations

Pac-West's disconnection of service to its customers, while regrettable, is necessary and appropriate, and will not adversely affect the public convenience and necessity. The public will not be unduly harmed by the discontinuance of the services described above because affected customers will be given notice that affords them an opportunity to transfer to a new carrier. As indicated herein, Pac-West is undertaking a customer notification initiative that is aimed at providing customers with sufficient notice and opportunity to select another provider. Further, Pac-West will make a concerted effort to ensure an orderly transition of service for all customers.

* * * *

An original and thirteen (13) copies of this letter are enclosed for filing. Please date-stamp the extra copy and return it in the self-addressed, postage-paid envelope provided. Should you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ethan Sprague', written in a cursive style.

Ethan Sprague
Vice President, Regulatory Affairs
Pac-West Telecom, Inc.

Attachments

Cc: Jean L. Kiddoo, Esq.

LIST OF ATTACHMENTS

Attachment A	Sample Customer Notice Letter Regarding Discontinuance
Attachment B	Sample Customer Notice Letter Sent Pursuant to Master Services Agreement
Attachment C	Letter to NPAC

ATTACHMENT A

Sample Customer Notice Letter Regarding Discontinuance

NOTICE OF SERVICE DISCONTINUANCE
YOU MUST TAKE IMMEDIATE ACTION
TO PREVENT DISRUPTION OF YOUR SERVICE
AND SERVICE TO YOUR END USERS
DO NOT DISREGARD THIS NOTICE

July 24, 2007

Re: Termination of All Services in Certain States and the District of Columbia

Dear Pac-West Customer:

As part of its reorganization under Chapter 11 of the Bankruptcy Code, Pac-West Telecomm, Inc. and Pac-West Telecomm of Virginia, Inc. ("Pac-West") WILL BE SEEKING BANKRUPTCY COURT AUTHORIZATION TO DISCONTINUE ALL SERVICE IN THE FOLLOWING LOCATIONS ("Exited Markets"):

Pac-West Exited Markets				
Alabama	Illinois	Michigan	New Jersey	South Carolina
Delaware	Indiana	Minnesota	New York	Tennessee
District of Columbia	Kansas	Mississippi	Ohio	Texas
Florida	Kentucky	Missouri	Pennsylvania	Virginia
Georgia	Maryland	North Carolina	Rhode Island	Wisconsin

The discontinuance of services in these locations will affect ALL of the services that Pac-West provides to Service Provider Customers such as VoIP Providers, Enhanced Service Providers, Internet Service Providers ("ISPs") and Telecommunications Providers that purchase services from Pac-West and incorporate those services in products that they provide to their customers. Such Pac-West services include, without limitation: public switched telephone network ("PSTN") origination and termination services, direct inward dial numbers, managed modem, collocation services, foreign exchange, private line, telephone numbers and transport services (together and separately, the "Services").

Pac-West reserves the right to withdraw this notice if the Bankruptcy Court declines to grant the requested authority.

After a careful review of its options, Pac-West has concluded (i) that discontinuing Services in the Exited Markets is essential to its being able to reorganize under Chapter 11, and Pac-West is therefore applying to the Bankruptcy Court for approval to reject certain contracts for Services and network elements in the Exited Markets, and (ii) that the continued availability of financing for its operations in the Exited Markets is not assured, which jeopardizes Pac-West's ability to continue to provide Services in the Exited Markets during the Chapter 11 proceedings.

Pac-West anticipates that it will be able to continue providing the Services in the Exited Markets for 30 days after the date of this notice. However, there is no assurance that Pac-West will have continued financing for operations in the Exited Markets even for this period. You should therefore immediately make alternative arrangements for your Services in the Exited Markets and convert to an alternate provider as quickly as possible.

YOUR IMMEDIATE ACTION IS REQUIRED! YOU MUST IMMEDIATELY SELECT A NEW TELECOMMUNICATIONS PROVIDER(S) TO REPLACE ALL SERVICES THAT YOU CURRENTLY OBTAIN FROM PAC-WEST.

BECAUSE PAC-WEST CANNOT GUARANTEE THAT THE NETWORK SERVING THE EXITED MARKETS WILL REMAIN OPERATIONAL FOR ANY PREDICTABLE PERIOD OF TIME, YOU AND ANY END USERS TO WHOM YOU PROVIDE SERVICE USING ANY PAC-WEST SERVICES MAY LOSE SERVICE IN THE EXITED MARKETS IMMEDIATELY AND WITHOUT FURTHER NOTICE.

Pac-West has very limited information about the end-users of its Service Provider Customers. To the extent that discontinuance of Pac-West service could affect the primary telephone service of any of your end users, you should consider whether to provide notice to your end users that their services may be interrupted for some period of time while you transition Services to a new carrier, and whether to give priority to the migration to other providers of those end-users and any users such as hospitals or law enforcement agencies that provide important public services.

PLEASE DO NOT DELAY in arranging for a new telecommunications carrier for all of the Services you currently obtain from Pac-West. You must take immediate action to identify a new carrier, authorize that new carrier to port all of your assigned telephone numbers from Pac-West to its service, and expedite any orders for physical facilities necessary to connect your network to the new carrier.

- If you currently have blocks of telephone numbers assigned by Pac-West, we urge that you make arrangements for your new carrier to port those numbers on a mass basis to expedite the process. Pac-West will cooperate in this by agreeing to let your new carrier port the numbers to its network as quickly as possible, subject only to any minimum waiting period required by applicable law and providing you, upon request, with lists of the telephone numbers assigned to you by Pac-West or ported by your customers to Pac-West.
- If not already in place, you must also establish any required network connections between your network and the network of the new carrier prior to porting local telephone numbers to ensure that the calls will be completed.

Pac-West is also informing the Federal Communications Commission ("FCC") and state public utility commissions of this development. The FCC permits customers to object to discontinuance of their service by a telecommunications provider. As provided in the FCC's rule 47



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CFR 63.71:

The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, D.C. 20554, and include in your comments a reference to the Section 63.71 Application of Pac-West Telecomm, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

This action affects Services only in the Exited Markets. Pac-West's services in other states are not affected by this notice.

Pac-West appreciates the opportunity it has had to serve you. We will try our best to make the transition of your Service(s) as smooth as possible. If you have any questions regarding the discontinuance of our Services or the refund of any unused Services or deposits, please contact us at **1-877-626-4325**.

Sincerely yours,

Pac-West Customer Service

ATTACHMENT B

Sample Customer Notice Letter Sent Pursuant to Master Services Agreement

NOTICE UNDER MASTER SERVICES AGREEMENT OF EXIT FROM CERTAIN REGIONS

July 24, 2007

To: ALL SERVICE PROVIDER CUSTOMERS

Re: 30-Day Notice under Section 18.1 and 18.2 of Master Services Agreement

Elimination of 25-State Region from Pac-West Service Footprint

Dear Pac-West Customer:

Pac-West Telecomm, Inc. and Pac-West Telecomm of Virginia, Inc. ("Pac-West") ARE EXERCISING THEIR CONTRACTUAL RIGHT TO EXIT THE REGIONS IN THE FOLLOWING 25 STATES (the "Exited Markets"):

Pac-West Exited Markets				
Alabama	Illinois	Michigan	New Jersey	South Carolina
Delaware	Indiana	Minnesota	New York	Tennessee
District of Columbia	Kansas	Mississippi	Ohio	Texas
Florida	Kentucky	Missouri	Pennsylvania	Virginia
Georgia	Maryland	North Carolina	Rhode Island	Wisconsin

This notice applies to ALL SERVICES in the Exited Markets.

This notice is given pursuant to the Master Services Agreement ("MSA") between you and Pac-West. You are required pursuant to this notice to cease using any services from Pac-West in the markets within thirty (30) days of the date of this notice. No orders will be accepted and no services will be activated in the Exited Markets as of the date of this notice. Local and intrastate termination will not be available in the Exited Markets thirty (30) days after the date of this notice. Pursuant to the MSA, you are permitted to immediately terminate services in the affected region without penalty. Please be aware that you remain responsible for payment in full for all services provided to you until the date of discontinuation.

In order to avoid any disruption of service to you or to any end users you serve using Pac-West services, you should immediately make alternative arrangements for your services in the Exited Markets and convert to an alternate provider as quickly as possible.

Reference is also made to Pac-West's notice to service provider customers taking Pac-West services in the Exited Markets of our application to the Bankruptcy Court seeking authority to terminate all services in the Exited Markets within thirty (30) days. In that notice, Pac-West strongly urges its service provider customers to make alternative arrangements and to have completed their migration to other providers within thirty (30) days. Pac-West reserves the right to withdraw these notices if the Bankruptcy Court declines to grant the requested authority.

To assist you in this process, Pac-West will provide blanket authority to the Number Portability Administration Center to port all telephone numbers assigned to you in the Exited Markets. We urge you to make arrangements for your new carrier to port the numbers on a mass or automated basis to expedite the migration. We can provide you, on request, with a list of the telephone numbers that our records show are assigned to you by Pac-West or ported by your customers to Pac-West. We also remind you that, if they are not already in place, you must establish any required network connections between your network and the network of the new carrier prior to porting telephone numbers to ensure call completion.

Pac-West appreciates the opportunity it has had to serve you. We will try our best to make the transition of your Service(s) in the Exited Markets as smooth as possible. If you have any questions regarding the discontinuance of our Services or the refund of any unused Services or deposits, please contact us at **1-877-626-4325**.

Sincerely yours,

Pac-West Customer Service

ATTACHMENT C

Letter to NPAC



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July 24, 2007

Number Portability Administration Center (NPAC)
c/o NeuStar, Inc.
Attention: Legal Department
4600 Center Oak Plaza
Sterling, VA 20166

Fax: (253) 563-5602

Dear Sirs:

Request for Expedited Number Porting Procedures in Certain States and the District of Columbia

As part of its reorganization under Chapter 11 of the Bankruptcy Code, Pac-West Telecomm, Inc. and Pac-West Telecomm of Virginia, Inc. ("Pac-West") have issued notices to their service provider and end-user customers that they intend to discontinue all services in the District of Columbia and the following states ("Exited Markets"):

Pac-West Exited Markets				
Alabama	Illinois	Michigan	New Jersey	South Carolina
Delaware	Indiana	Minnesota	New York	Tennessee
District of Columbia	Kansas	Mississippi	Ohio	Texas
Florida	Kentucky	Missouri	Pennsylvania	Virginia
Georgia	Maryland	North Carolina	Rhode Island	Wisconsin

After a careful review of its options, Pac-West has concluded (i) that discontinuing services in the Exited Markets is essential to its ability to reorganize under Chapter 11, and Pac-West is therefore applying to the Bankruptcy Court for approval to reject contracts for services in the Exited Markets, and (ii) that the continued availability of financing for its operations in the Exited Markets is not assured, which could jeopardize Pac-West's ability to continue to provide service during the Chapter 11 proceedings.

Pac-West anticipates that it will be able to continue providing the services in the Exited Markets for 30 days after the date of the notices. However, there is no assurance that it will have continued financing for operations in the Exited Markets even for this period. Pac-West has therefore notified its customers in the Exited Markets that they must immediately make alternative arrangements for their services in the Exited Markets and convert those services to new providers as quickly as possible.

This action affects services only in the Exited Markets. Pac-West's services in other states are not affected by these notices.

Nearly all of Pac-West's service provider and end-user customers in the Exited Markets will have to port their telephone numbers to other providers. We anticipate the possibility that Pac-West's limited remaining staff could be overwhelmed by the volume of number portability requests. Pac-West therefore requests NPAC to process number porting orders affecting services in the Exited Markets as expeditiously as possible. To the extent that its approval is required for any of the porting process, this letter provides Pac-West's approval. Specifically,

- By this letter Pac-West hereby approves any otherwise validly submitted order or request to port a number currently assigned to Pac-West in the Exited Markets.
- To the extent that there are other activities where, under normal circumstances, NPAC typically would wait to process the port-out request based on confirmation from Pac-West or some other affirmative act by Pac-West, Pac-West hereby authorizes NPAC to process the port out request without waiting for such confirmation or other affirmative act by Pac-West.
- Pac-West also authorizes NPAC to make such NPAC SMS, other system changes and/or changes in the Pac-West "tunables" so that Pac-West's concurrence windows are reduced, to the extent possible, to zero.
- Any otherwise validly submitted order to port a number from Pac-West in the Exited Markets should not be held up by Pac-West's inability to concur or approve the customer transfer.
- This "blanket" pre-approval applies only to the Exited Markets.

This "blanket" pre-approval does not relieve any entity (including but not limited to any carrier submitting a port request or any vendor that processes the request) of its responsibility to comply with applicable law and regulations, including those prohibiting "slamming". As NPAC is likely aware, any potential "slamming" liability rests with the submitting carrier not with either NPAC or Pac-West.

Copies of this letter are being provided to NeuStar, Inc., VeriSign, Inc., Synchronoss Technologies, Inc., Wisor and AT&T Connecticut SNET Service Bureau for Number Portability and may also be provided to other vendors of number portability order management services.

Questions on customer migration and number portability may be addressed to Kim Rego at (209) 926-4214 or kreg@pacwest.com or Joseph Perez at (209) 926-3101 or josperez@pacwest.com.

Sincerely yours,

PAC-WEST TELECOMM, INC.