

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**January 12, 2012**

**IN RE:**

**JOINT PETITION OF UPH HOLDINGS, INC.,  
UPH ACQUISITION SUB INC., PAC-WEST  
ACQUISITION COMPANY, LLC, AND PAC-  
WEST TELECOMM, INC. FOR CONSENT TO  
TRANSFER CONTROL OF PAC-WEST  
TELECOMM, INC.**

**DOCKET NO.  
11-00196**

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**ORDER APPROVING TRANSFER OF CONTROL**

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This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at a regularly scheduled Authority Conference held on December 12, 2011 for consideration of the *Joint Petition to Transfer Control* ("Joint Petition") filed by UPH Holdings, Inc., UPH Acquisition Sub Inc., Pac-West Acquisition Company, LLC, and Pac-West Telecomm, Inc. for Consent to Transfer Control of Pac West Telecomm, Inc. on November 10, 2011.

UPH Holdings, Inc. ("UPH") is a privately held, non-operating holding company with investments in companies operating in the data and voice communications Industries. UPH does not currently hold any authorizations to provide telecommunications services. UPH Acquisition Sub Inc. ("UPH-AS") is a California corporation and a wholly-owned subsidiary of UPH. UPH-AS was formed for Pac-West to merge with and Pac-West is the surviving entity. UPH-AS does not hold any authorizations to provide telecommunications services. Pac-West Acquisition Company, LLC ("PWAC") is a limited liability company formed under the laws of the State of Washington. PWAC is a wholly-owned subsidiary of Columbia Ventures Corporation, a privately owned Washington

corporation. PWAC holds no authorizations relating to the provisions of telecommunications services. Pac-West Telecomm, Inc. (“Pac-West”) is a California corporation and a wholly-owned subsidiary of PWAC. In Tennessee, Pac-West is authorized to provide local exchange and facilities-based and resold interexchange telecommunications services pursuant to Authority Order in Docket No. 05-00314 on January 11, 2006. Pac-West also holds domestic and International Section 214 authorizations from the FCC to provide interstate and international telecommunications services.

### **The Joint Petition**

The parties entered into a Reorganization Agreement (“Agreement”) on August 30, 2011, by and among UPH, UPH-AS, PWAC, and Pac-West, 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 will have a 29% ownership interest in UPH. Pac-West will be merged into UPH-AS, as a wholly-owned subsidiary of UPH, with Pac-West as the surviving entity.

The *Joint Petition* states the proposed transfer of control transaction will have no adverse impact on customers or on public interest considerations. Pac-West will continue to be managed by personnel with experience in the telecommunications industry and may realize an additional infusion of capital to support further expansion of Pac-West’s current operations. Pac-West’s customers will continue to receive their existing services at the same rates, terms and conditions they had prior to the transfer and any future changes in the rates terms and conditions of service will be made consistent with Authority requirements.

### **Findings and Conclusions**

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as

follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on December 12, 2011, the voting panel assigned to this docket considered the transfer of authority requested in the *Joint Petition*. Based on assertions in the *Joint Petition*, the panel found that Tenn. Code Ann. § 65-4-113 (2004) applies to this transaction because the ultimate ownership of Pac-West is being transferred to UPH, which does not hold a certificate at the holding company level. Further, the panel found that UPH is capable of maintaining the operations of Pac-West and the transfer is in the public interest and complies with applicable law. The panel found UPH has an experienced management team with experience in the telecommunications industry.

Based on the administrative record and findings, the panel voted unanimously to approve the transfer contingent upon FCC approval and the Petitioners should file any documentation from the FCC regarding subsequent action on the transfer of control with the Authority.

**IT IS THEREFORE ORDERED THAT:**

The transfer of authority as described in the *Joint Petition to Transfer Control* of UPH Holdings, Inc., UPH Acquisition Sub Inc., Pac-West Acquisition Company, LLC, and Pac-West

Telecomm, Inc. for Consent to Transfer Control of Pac West Telecomm, Inc. and discussed herein is approved pursuant to Tenn. Code Ann. §65-4-113 (2004), contingent on approval by the Federal Communications Commission.



Kenneth C. Hill, Chairman



Sara Kyle, Director



Mary W. Freeman, Director