



State of New Jersey
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Via Electronic Mail

June 9, 2023

Ms. Sherri L. Golden,
Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: Notice of Transfer of Control of Xchange Telecom LLC and
NOVA Infrastructure Capital Advisors
BPU Docket No.: TM22110694

Dear Secretary Golden:

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed the above referenced Notice of Transfer of Control (“Notice”) filed on November 16, 2022, and restated petition, filed on May 16, 2023, by Xchange Telecom LLC (“Xchange Telecom” or “Transferor”) and NOVA Infrastructure Capital Advisors (“NOVA” or “Transferee” and, together with Transferor, “Parties”), collectively the (“Petitioners”) with the New Jersey Board of Public Utilities (“Board”) requesting that the Board approve a transfer of ownership of Xchange Telecom to NOVA.¹ Rate Counsel previously filed comments on April 3, 2023, not opposing the transfer of control, and files these amended comments to note its continued non-opposition. Kindly acknowledge receipt of the electronic filing.²

¹ I/M/O Transfer of Control of Xchange Telecom LLC and NOVA Infrastructure Capital Advisors, BPU Dkt. No. TM22110694, Notice (May 16, 2023) (“Restated Petition”), p. 1.

² Pursuant to e-filing procedures approved by the Board under Docket No. Docket No. EO20030254, dated March 19, 2020.

Petitioners and Transaction

Transferor, Xchange Telecom, was granted authority by the Board to operate as a Competitive Local Exchange Carrier in New Jersey on February 20, 2003, and was additionally granted authority by the Board to operate as an Eligible Telecommunications Carrier in New Jersey on May 19, 2021.³ **Transferee**, NOVA, is a Delaware limited liability company and the ultimate control entity and majority owner of an infrastructure investment firm formed in Delaware and based in New York that targets middle market opportunities in transportation, environmental services, energy and energy transition, communications and other infrastructure sectors primarily in North America.⁴ The transfer of control is in lieu of a formal foreclosure proceeding resulting from Xchange Telecom's failure to fully and timely pay back a \$16.15 million loan from three investment funds and related entities indirectly controlled by NOVA.⁵ The transfer occurred on November 28, 2022, resulting in Xchange Telecom becoming a wholly controlled and indirect subsidiary of NOVA.⁶

Petitioners submit approval of the Transaction is in the public interest, noting that Xchange Telecom serves a critical role in the New Jersey telecommunications services industry by using an innovative wireless point-to-multipoint infrastructure to provide a competitive alternative to incumbent wireline service providers.⁷ Petitioners assert that this approach permits service in highly urban areas where deploying terrestrial fiber or coaxial infrastructure would be challenging and expensive.⁸ Petitioners argue that many customers are low-income and would not have competitive options for broadband internet and communications without Xchange

³ Restated Petition, pp. 2-3.

⁴ Id., pp. 3-4.

⁵ Id., p. 4.

⁶ Id., p. 2.

⁷ Id., p. 7.

⁸ Id.

Telecom's offerings, making it critically important to preserve operations.⁹ Rate Counsel agrees that it is essential to continue providing competitive broadband service to low-income and/or inner-city customers. Without the merger the services currently provided would no longer be available because the company would have gone out of business.¹⁰ Thus, based on the facts provided, Board approval is in the public interest and will benefit consumers.

Board approval of the transactions proposed in the Notice filing is required. Rate Counsel notes that prior Board approval is required in any sale or merger, and that Board approval must be based on the Board's satisfaction that the proposed transaction will result in positive benefits and is in the public interest, under N.J.S.A. 48:2-51.1 et seq., and N.J.S.A. 48:3-10. It is well within the Board's statutory authority and core functions to review these transactions to ensure such mergers, acquisitions and the financing connected to such filings will indeed result in positive benefits to New Jersey customers.

Rate Counsel supports the contemplated continued provision of innovative, high-quality telecommunications services to the public and the promotion of robust competition in the New Jersey telecommunications market, affirmed by Petitioner in its filing. Accordingly, Rate Counsel does not oppose a Board grant of approval based on the Board's determination that the transaction connected thereto yields positive benefits to New Jersey customers and are in the public interest.

⁹ Id.

¹⁰ See id., p. 2 ("The proposed transaction will enable Xchange Telecom to continue to operate as a competitive provider of broadband and telecommunications services in New Jersey") and p. 4 ("In lieu of a formal foreclosure proceeding, the two individuals who are the co-founders and 100% interest holders in Xchange Telecom ... agreed to transfer their interests in Xchange Telecom to ... NOVA.")

Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN,
DIRECTOR
NJ DIVISION OF RATE COUNSEL

/s/ Emily Smithman

Emily F. Smithman,
Assistant Deputy Rate Counsel

EFS/td
c: Service List