Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Application of	)	
	)	
Xchange Telecom LLC	)	WC Docket No. 22-_______
Licensee and Transferor	)	
	)	
and	)	File No. ITC-T/C-20221115-00133
	)	
NOVA Infrastructure Capital Advisors, LLC	)	
Transferee	)	ULS File No. 0010279200
	)	
for Authority Pursuant to Section 214 of the	)	
Communications Act of 1934, as Amended, and	)	
Sections 63.04 and 63.24 of the Commission's	)	
Rules to Transfer Control of a Domestic and	)	
International Section 214 Carrier	)	

REQUEST FOR SPECIAL TEMPORARY AUTHORITY

I. INTRODUCTION

On November 15, 2022, NOVA Infrastructure Capital Advisors, LLC ("NOVA") and Xchange Telecom LLC ("Xchange Telecom" or "the Company") filed applications with the Commission seeking consent for the transfer of control of Xchange Telecom to NOVA. The applications sought Commission approval for the transfer of control of Xchange Telecom's domestic and international 214 authorizations ("*214 Application*"), along with 23 wireless microwave licenses ("*Wireless Application*").

The November 15 transfer of control applications that were filed by the parties followed earlier submissions to the Commission on September 15, 2022 seeking consent for the appointment of two independent managers to oversee the Company on a day-to-day basis while the future of the Company was determined. The appointment of the independent managers, which was consented to by the existing owners of the Company, enabled NOVA to inject short term operating capital into Xchange Telecom, thus helping it to maintain its operations and the ongoing provision of services to the Company's subscribers.

Unfortunately, the continuation of the independent management structure is unsustainable for an extended period due to the significant costs of this arrangement combined with the growing need to allocate increasingly large amounts of capital into the Company to bolster its liquidity and ensure its long-term operations. The parties therefore request special temporary authority ("STA") to permit NOVA to assume control over Xchange Telecom on November 28, 2022 while the underlying transfer of control applications are considered by the Commission. The grant of an STA is justified because it would help to preserve Xchange Telecom in its important role as a competitive provider of telecommunications and broadband access services in the New York metropolitan area, including the provision of Lifeline, the Affordable Connectivity Program, and other services to underserved populations in both New York and New Jersey.

II. IDENTITIES OF THE PARTIES

A. NOVA Infrastructure Capital Advisors, LLC

NOVA, a Delaware limited liability company, is 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. Voting control of NOVA is held by Chris Beall, who is the Managing Partner and Co-Founder of the firm. A majority of the attributable membership interests in NOVA are also held by Beall, with membership holding in excess of 10% also held by Allison Kingsley, a Partner and Co-Founder of NOVA, and Donna Toth, a Partner and the Chief Financial Officer of NOVA. These three individuals are all U.S. citizens.

NOVA is the ultimately indirect controlling entity of three investment funds that hold the debt interests in Xchange Telecom. Details regarding the funds and the manner in which these debt interests would be converted to non-debt interests are provided in the *214 Application*.

B. Xchange Telecom LLC

Xchange Telecom is a telecommunications carrier and broadband access provider through its brand names Skywire Networks and Xchange Telecom. Xchange is authorized by the FCC and state regulatory authorities to operate in New York, New Jersey and Maryland, with the vast majority of its enterprise and residential customers and operations based in Brooklyn, Bronx, and Queens with additional customers in Manhattan and Jersey City. Xchange Telecom is also authorized to operate as an Eligible Telecommunications Carrier ("ETC") in New York and New Jersey, providing important services to underserved communities, including Lifeline telecommunications services. Xchange Telecom serves its customers primarily using a fixed wireless infrastructure, avoiding the need for an expensive buildout of a fiber-based distribution network.

Xchange Telecom, holds international 214 authority issued by the Commission to Xchange Telecom Corporation, file number ITC-214-20020404-00163. Xchange Telecom also acts as a domestic 214 carrier. Additionally, Xchange holds Commission authorizations for approximately two dozen fixed microwave licenses under FRN 0006831713.

III. LEGAL AUTHORITY

The Commission has legal authority to grant an STA to permit the immediate assumption of control of Xchange Telecom by NOVA during the Commission's consideration of the underlying transfer of control applications. With respect to Xchange Telecom's domestic and international 214 authorizations, the Commission's authority derives from Section 214(a) of the Communications Act, which provides that "the Commission may, upon appropriate request being made, authorize temporary or emergency service, or the supplementing of existing facilities, without regard to the provisions of this section."[1] With respect to Xchange Telecom's private microwave licenses, Section 1.931(b) of the Commission's rules authorizes the grant of an STA to address "emergency situations" and in "circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest."[2] As discussed in the following section of this STA request, the capital resource difficulties currently being experienced by Xchange Telecom fully satisfy these legal requirements.

IV. PUBLIC INTEREST STATEMENT

The requested STA involves an emergency situation in which Xchange Telecom has insufficient working capital available to maintain its workforce and continue operations without NOVA assuming control and providing significant additional resources. Because of this extraordinary situation, the absence of an STA would seriously prejudice the public interest through the potential loss of critically important telecommunications and broadband access services that are being provided to underserved consumers in urban areas of the New York metropolitan area.

Xchange Telecom serves a critical role in the New York region by providing a competitive alternative to incumbent wireline service providers using an innovative wireless point-to-

[1] 47 C.F.R. § 214(a).

[2] 47 C.F.R. § 1.931.

multipoint infrastructure. This approach has permitted Xchange Telecom to serve heavily urban areas (such as Brooklyn and Queens) where it would be exceedingly expensive and challenging to deploy terrestrial fiber or coaxial infrastructure. The continued operation of these wireless licenses is crucial to Xchange Telecom's provision of service to these customers.

Xchange Telecom's customer base is reflective of these dense urban conditions. Xchange Telecom is authorized as an Eligible Telecommunications Carrier in New York and New Jersey. Many of its customers are low income and qualify for subsidies provided by the Commission's Lifeline, Affordable Connectivity Program, and through other government supported mechanisms. Many of these customers would have no competitive and affordable options with respect to their access to broadband internet and communications services absent Xchange Telecom's attractive offerings. Given the important benefits that Xchange Telecom provides its customers, it is critically important that its ongoing operations be preserved, its employees provided with stable management, and its access to financial resources protected.

As an initial effort to stabilize the Company's situation, on September 15, 2022, two independent managers were appointed to oversee the day-to-day operations of Xchange Telecom. The appointment of these independent managers was consented to by Xchange Telecom's current owners. The parties took this action to preserve the Company and its assets in a way that would facilitate its ongoing operations and protect the interests of its customers. Unfortunately, the carrying cost of these independent managers, combined with their advisors and outside legal counsel, are exceeding the Company's working capital.

NOVA's proposal to assume control over Xchange Telecom as of November 28, 2022, would eliminate these extraneous costs and permit NOVA and its investors to inject significant additional operating capital into the Company, thus enabling the Company to maintain its payroll and continue in its important role as a competitive provider of telecommunications and broadband access services in the New York metropolitan area. The parties therefore urge the Commission to promptly grant this STA request.

Respectfully submitted,

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