



Agenda Date: 9/18/23  
Agenda Item: IVB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE  
TELEVISION AND  
TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT PETITION OF XCHANGE ) ORDER  
TELECOM LLC AND NOVA INFRASTRUCTURE CAPITAL )  
ADVISORS, LLC FOR APPROVAL OF A TRANSFER OF )  
CONTROL OF XCHANGE TELECOM, LLC TO NOVA )  
INFRASTRUCTURE CAPITAL ADVISORS, LLC ) DOCKET NO. TM22110694

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Bruce A. Olcott, Jones Day**, Counsel for NOVA Infrastructure Capital Advisors, LLC

BY THE BOARD:

By letter dated May 16, 2023, Xchange Telecom LLC ("Xchange Telecom" or "Company") and NOVA Infrastructure Capital Advisors, LLC ("NOVA") (collectively, "Petitioners") submitted a restated petition requesting authority from the New Jersey Board of Public Utilities ("Board") for the transfer of ownership of Xchange Telecom to NOVA ("Petition"). The Petition replaced the information provided by the Petitioners November 16, 2022 application in its entirety. The transaction, which was consummated on November 28, 2022, resulted in Xchange Telecom becoming a wholly controlled, indirect subsidiary of NOVA ("Transaction"). By this Order, the Board considers the Petitioners request for authorization of the Transaction.

**BACKGROUND**

Xchange Telecom, previously owned by Alan Levy and Alfred West ("Co-Founders"), is a telecommunications carrier and broadband access provider through its brand names Skywire Networks and Xchange Telecom. Xchange Telecom operates as a fixed line carrier in New Jersey and serves its customers using both resold wireline capacity and fixed-location wireless infrastructure. Xchange Telecom's parent company, Xchange Telecom Corp., was granted authority by the Board to operate in New Jersey as a Competitive Local Exchange Carrier

(“CLEC”) on February 20, 2003.<sup>1</sup> Xchange Telecom operates as an Eligible Telecommunications Carrier (“ETC”) pursuant to an order issued May 19, 2021.<sup>2</sup> Xchange Telecom provides Lifeline services and supports the Affordable Connectivity Program (“ACP”). Xchange Telecom has more than 10,000 customers in New York and New Jersey that receive Lifeline services, all of which receive these services on a common carrier basis. The majority of these customers receive these services using resold copper wireline capacity purchased from a wholesale carrier, with a minority receiving services transported in part using fixed wireless links. Xchange Telecom supports the ACP program by providing fixed and mobile ACP services to its customers in New Jersey.

NOVA, a Delaware limited liability company, is the controlling 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. The Managing Partner and Co-Founder, Chris Beall, holds voting control while Allison Kingsley, Partner and Co-Founder, and Donna Toth, Partner and Chief Financial Officer, both hold membership in excess of 10%. These three (3) individuals are all U.S. citizens and hold 56.8%, 25.12%, and 12.30% of the ownership interest in NOVA, respectively.

NOVA indirectly controls three (3) investment funds and related entities that entered into a credit agreement that initially provided a \$16.15 million loan to Xchange Telecom. On September 14, 2022, the loan became due and payable in accordance with the credit agreement’s terms. Xchange Telecom failed to make the full and timely payment on the loan. In lieu of a formal foreclosure proceeding, the Co-Founders agreed to transfer their interests in Xchange Telecom to a NOVA-controlled Delaware entity, NOVA-Xchange Investco, L.P. (“NOVA-Xchange”). On November 28, 2022, the Transaction was consummated when Xchange Telecom was transferred to and became entirely owned and controlled by NOVA-Xchange.

The Petitioners stated that the Transaction would enable Xchange Telecom to continue to operate as a competitive provider of broadband and telecommunications services in New Jersey, but will otherwise have no effect on the Company’s operations. The Petitioners asserted that the Transaction would have no adverse impact on New Jersey customers. Furthermore, the Petitioners state that the Transaction will enable NOVA to provide operating capital for Xchange Telecom, ensuring that its employees are provided with stable management and that the Company continues to serve to its customers in New Jersey.

The Petitioners asserted that granting the Petition is in the public interest, as Xchange Telecom serves a critical role in the New Jersey telecommunications services industry. The Petitioners stated that Xchange Telecom provides a competitive alternative to incumbent wireline service providers. Additionally, the Petitioners contended that the wireless point-to-multipoint infrastructure permits Xchange Telecom to serve heavily urban areas where it would otherwise be expensive and challenging to deploy terrestrial fiber or coaxial infrastructure. According to the Petitioners, many of Xchange Telecom’s customers are low income and qualify for subsidies provided by the Federal Communications Commission’s (“FCC”) Lifeline program, or through other government-supported mechanisms. The Petitioners claimed that many of these customers

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<sup>1</sup> In re the Petition for an Order Authorizing Xchange Telecom Corp to Provide Facilities-Based Competitive Local Exchange Telecommunications Services within the State of New Jersey, BPU Docket No. TE02050299, Order Dated February 20, 2003.

<sup>2</sup> In re Petition of Xchange Telecom, LLC for Designation as an Eligible Telecommunications Carrier in the State of New Jersey, BPU Docket No. TO20090615, Order Dated May 19, 2021.

would have no competitive options with respect to their access to broadband internet and communications services absent Xchange Telecom's offerings. NOVA's assumption of control over Xchange Telecom would provide the Company with additional operating capital, thus helping to ensure that its employees are provided with stable management and are able to continue to provide service to its customers.

On April 3, 2023, the New Jersey Division of Rate Counsel ("Rate Counsel") filed a letter with the Board indicating that it did not oppose the transfer of control. Accordingly, Rate Counsel supported 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 Petitioners in their filing. Accordingly, Rate Counsel did not oppose a Board grant of approval, subject to the Board's determination that the Transaction yields positive benefits to New Jersey customers and is in the public interest.

### **DISCUSSION AND FINDINGS**

In considering a request for transfer of control, the Board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the transfer of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10. 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).

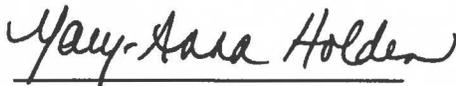
After a careful review of this matter, the Board **FINDS** that the transfer of control under the Transaction is consistent with the applicable law, is not contrary to the public interest, and will have no material impact on the rates of current customers or on New Jersey employees. The Board also **FINDS** that the transfer of control under the Transaction will have no impact on the provision of safe, adequate, and proper service, and will positively benefit competition. Therefore, based on the Board's review, the Board **HEREBY AUTHORIZES**, *nunc pro tunc*, the Petitioners to complete the Transaction as described in the Petition.

This Order shall be effective on September 25, 2023.

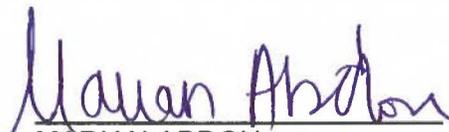
DATED: September 18, 2023

BOARD OF PUBLIC UTILITIES  
BY:

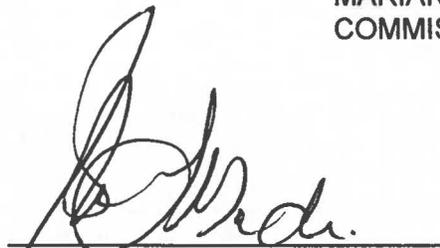
  
CHRISTINE GUHL-SADOVY  
PRESIDENT

  
MARY-ANNA HOLDEN  
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DR. ZENON CHRISTODOULOU  
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MARIAN ABDOU  
COMMISSIONER

ATTEST:

  
SHERRI L. GOLDEN  
SECRETARY

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

IN THE MATTER OF THE JOINT PETITION OF XCHANGE TELECOM, LLC AND NOVA  
INFRASTRUCTURE CAPITAL ADVISORS, LLC FOR APPROVAL OF A TRANSFER OF  
CONTROL OF XCHANGE TELECOM, LLC TO NOVA INFRASTRUCTURE CAPITAL  
ADVISORS, LLC

DOCKET NO. TM22110694

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