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**BEFORE THE ARIZONA CORPORATION COMMISSION**

DOUG LITTLE  
Chairman  
BOB STUMP  
Commissioner  
BOB BURNS  
Commissioner  
TOM FORESE  
Commissioner  
ANDY TOBIN  
Commissioner

Arizona Corporation Commission

**DOCKETED**

MAY 13 2016

DOCKETED BY	
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IN THE MATTER OF X5 OPCO LLC AND  
NOVATEL LTD., FOR APPROVAL OF  
SALE OF ASSETS AND CANCELLATION  
OF CC&N.

DOCKET NOS. T-20946A-15-0385  
T-20601A-15-0385  
DECISION NO. 75547

ORDER

Open Meeting  
May 3 and 4, 2016  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On November 9, 2015, X5 OpCo LLC ("X5") and NovaTel Ltd., Inc. ("NovaTel") (together, "Applicants"), filed a joint notification with the Arizona Corporation Commission ("Commission") of the transfer of NovaTel's customers and assets in Arizona to X5. They also seek approval to cancel the Certificate of Convenience and Necessity ("CC&N") of NovaTel.

2. Additionally, in a supplement to the Application filed December 22, 2015, the Applicants requested a waiver of Arizona Administrative Code ("A.A.C.") R14-2-1901 *et seq.* (the "Slamming" Rules) and a waiver of any notice requirements under A.A.C. R14-2-1107.

**Introduction**

3. The Applicants submitted this filing as a result of their intention to participate in a transaction in which NovaTel will transfer certain of its network assets and customers to X5 (the "Transaction"). In Arizona, this Transaction involves all of NovaTel's customers and certain assets.

1 Upon closure of the Transaction, NovaTel will no longer need its Arizona resold long distance  
2 CC&N.

3 4. In order that X5 may provide services to the acquired customers, X5 separately filed a  
4 CC&N application in Docket No. T-20946A-15-0384 for authority to provide facilities-based and  
5 resold long distance telecommunications services. X5 requests that the Commission process the relief  
6 requested in this Application in parallel with the CC&N application. Applicants closing the  
7 Transaction on or about December 15, 2015, or following regulatory approvals where required.

### 8 **Background**

#### 9 *A. X5 OpCo LLC*

10 5. X5 is a limited liability corporation formed under the laws of the State of Delaware in  
11 October 2014, with its headquarters is located at 1008 Western Avenue, Suite 400, Seattle,  
12 Washington, 98104. X5 is a wholly owned subsidiary of X5 Holdings LLC which in turn is majority  
13 owned and controlled by NewSpring Holdings LLC (“NewSpring”). NewSpring is a limited liability  
14 company organized under the laws of the State of Delaware. NewSpring is a private equity fund that  
15 seeks to partner with successful business owners and management teams to grow profitable  
16 businesses. X5 is also authorized by the Federal Communications Commission (“FCC”) to provide  
17 international and domestic interstate services as a non-dominant carrier.

18 6. X5 has separately applied for a certificate of convenience and necessity<sup>1</sup> to provide  
19 facilities-based and resold long distance telecommunications services in the State of Arizona as stated  
20 above. X5 acknowledges that in Arizona, the Transaction may not be completed until the  
21 Commission grants the Company’s pending application.

#### 22 *B. NovaTel Ltd., Inc.*

23 7. NovaTel is a corporation organized under the laws of the State of Texas in 2007. The  
24 Company converted from a limited partnership originally formed in 2000. NovaTel is a provider of  
25 regulated time division multiplex interexchange voice, network services including unregulated  
26 Ethernet, unregulated MPLS/VPN, and regulated dedicated, non-switched, private line services.

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<sup>1</sup> Docket No. T-20946A-15-0384.

1 NovaTel provides intrastate, interstate, and international non-facilities-based switched and dedicated  
2 interexchange telecommunications services. NovaTel is authorized to provide telecommunications  
3 services in Arizona under Docket No. T-20601A-08-0351, Decision No. 71911, dated September 28,  
4 2010.

5 8. In addition, NovaTel petitioned the Commission to remove the \$10,000 performance  
6 bond requirement in Decision No. 71911 because NovaTel's customer deposit and advance payment  
7 requirements were removed from its tariff. This request was granted in Decision No. 72389, dated  
8 May 27, 2011.

### 9 **Description of the Transaction**

10 9. The Applicants state that NovaTel and X5 entered into an Asset Purchase Agreement  
11 ("Agreement") whereby NovaTel agreed to sell, and X5 OpCo agreed to acquire, certain NovaTel  
12 assets including interexchange subscribers located in Arizona and other jurisdictions served by the  
13 NovaTel on October 13, 2015. Under the terms of the Agreement, X5 is to provide transferred  
14 NovaTel subscribers the same services under the same rates, terms and conditions provided by  
15 NovaTel. The Transaction becomes effective on or about December 15, 2015, or following  
16 regulatory approvals where required. NovaTel has made an affirmative business decision to cease the  
17 provision of telecommunications services following the consummation of the Agreement and requisite  
18 regulatory approvals. Therefore, NovaTel requests that its current Arizona CC&N be cancelled at that  
19 time.

### 20 **Public Interest Considerations**

21 10. The Applicants submit that the proposed Transaction serves the public interest. The  
22 Transaction will result in the assignment of NovaTel's customers to X5 which will continue to provide  
23 telecommunications services to such assigned customers without interruption. The Transaction will  
24 provide additional capitalization needed to expand X5's services and operations, enhance X5's ability  
25 to provide competitive telecommunications services to the public and enable X5 to explore new  
26 innovative service opportunities and provide added value to customers. In addition, the Applicants  
27 further state that the Transaction will be entirely transparent to subscribers and customers. The  
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1 Transaction will not result in any immediate change in service rates, terms, and conditions, and will  
2 not result in the discontinuance, reduction, loss or impairment of services to subscribers or customers.

3 **Request For Waiver of Slamming and Cramming Rules**

4           11. In accordance with the terms of their service contracts and the rules and procedures of  
5 the FCC and applicable state(s), including this Commission, customers have been notified of the  
6 proposed transaction and the change in their telecommunications provider from NovaTel to X5. In a  
7 filing with the FCC, NovaTel and X5 attest<sup>2</sup> that they have provided direct customer notice of the  
8 transfer pursuant to Section 64.1120(e) of the FCC's rules, 47 C.F.R. §64.1120(e), a copy of which is  
9 attached to the Application as Attachment 1. Applicants request, to the extent necessary, that the  
10 Commission grant a waiver of A.A.C. R14-2-1904 *et seq.* (the "Slamming Rules") and any other  
11 applicable anti-slamming regulations that may be consistent with the FCC's rules regarding the  
12 transfer of customer bases.

13           12. Applicants also request that the Commission, to the extent applicable, grant a waiver  
14 of A.A.C. R14-2-2001 *et seq.* (the "Cramming Rules"), which, among other things, require a  
15 telecommunications company to obtain authorization from a customer when ordering  
16 telecommunications products and services in order to prevent unauthorized carrier charges on their  
17 bill. X5 is acquiring NovaTel's customer base and other assets and the affected customers will receive  
18 the same services as they currently receive under the same rates, terms and conditions. Applicants  
19 believe that the Commission's Cramming Rules do not apply in this instance, as NovaTel's customers  
20 are simply being transferred to X5. No new products and services are being ordered from X5 and no  
21 new charges will be assessed as a result of the Transaction.

22           13. To the extent that the Cramming Rules apply to the Transaction, Applicants submit  
23 that it is in the public interest to grant a waiver of the rules in this case because current NovaTel  
24 customers have received at least 30 days' notice of the Transaction as required by FCC rules.  
25 Customers have been given full notice that their current services will be provided by X5 after the  
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<sup>2</sup> Copy of Notification of X5 OpCo LLC pursuant to 47 C.F.R. § 64.1120(e) filed in docket on February 19, 2016.

1 Transaction is completed, and that there will be no change in the quality or cost of their services as a  
2 result of the Transaction.

3 **Request for Waiver of A.A.C. R-14-2-1107 (Discontinuance Rules)**

4 14. In connection with the request for discontinuance, the Applicants request the  
5 Commission waive any further notice requirements that may be required under A.A.C. R14-2-1107.  
6 There are two notice requirements in A.A.C. R14-2-1107: a customer notice section in A.A.C. R14-2-  
7 1107 (A)(2) and a publication requirement in A.A.C. R14-2-1107 (B).

8 15. As previously mentioned, Applicants stated customers received a notice of the transfer  
9 of service from NovaTel to X5 in accordance with the rules and procedures of the Commission. Staff  
10 has examined the customer notice and believes it meets the notice requirement of A.A.C. R14-2-1107  
11 (A)(2). Therefore, the granting of a waiver request for A.A.C. R14-2-1107 (A)(2) would be  
12 appropriate.

13 16. In regard to the waiver request for published notice, Staff does not believe that the  
14 transfer of customers from one carrier to another qualifies as a discontinuance of service or an  
15 abandonment of any portion of its service area. Therefore, Staff believes that a waiver of A.A.C. R14-  
16 2-1107 (B) is appropriate in this circumstance as service to NovaTel's customers will not be  
17 abandoned or discontinued and NovaTel's customers will continue to receive service under the same  
18 rates, terms and conditions as provided by X5.

19 **Request To Cancel the Certificates and Tariffs of NovaTel Ltd., Inc.**

20 17. Following the Transaction, NovaTel's customer accounts will be transferred to X5.  
21 Therefore, NovaTel requests that, upon notification from the Applicants that the Transaction is  
22 complete with regards to Arizona customers and assets, the Commission cancel the CC&N and tariff  
23 of NovaTel.

24 **Complaints and Compliance**

25 18. The Consumer Services Section of the Utilities Division reports from January 1, 2012  
26 to April 13, 2016, that there have been no complaints, inquiries, or opinions about X5 nor NovaTel.  
27 According to the Corporations Division, both X5 and NovaTel are in good standing. NovaTel is  
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1 current in filing its Utilities Annual Reports. The Compliance Section of the Utilities Division reports  
2 that NovaTel is in compliance.

3 **Staff Recommendations**

4 19. Staff recommends approval of X5's Application to acquire the Arizona customers of  
5 NovaTel. Staff also recommends, upon notification from the Applicants that the proposed  
6 transaction has been completed, the CC&N and tariff of NovaTel be cancelled. Upon cancellation of  
7 its CC&N, NovaTel will no longer be authorized to provide telecommunications services in Arizona.  
8 Therefore, NovaTel will no longer be subject to the requirements of Decision Nos. 71911 and 72389.

9 20. Staff further recommends that approval be conditioned on the following:

- 10 a. Approval of the transfer of customers and assets should not become effective  
11 until the Commission approves the X5 application for a Certificate of  
12 Convenience and Necessity in Docket No. T-20946A-15-0384; and  
13 b. The Applicants provide notice to Docket Control within ten (10) days  
14 following completion of the proposed transactions in this Application.

15 21. Staff believes the Commission's Slamming, Cramming and Discontinuance Rules all  
16 apply to this transaction. However, based on the above, Staff recommends the following:

- 17 • A waiver of A.A.C. R14-2-1904 et seq. the Commissions Slamming Rules with  
18 respect to the transfer consist;
- 19 • A waiver not be granted of A.A.C. R14-2-2001 et seq. cramming rules because  
20 the rates, terms and conditions of service will not change as a result of this  
21 proposed transfer; and
- 22 • A waiver of A.A.C. R14-2-1107, which governs a telecommunications  
23 company's discontinuance of competitive local exchange or interexchange  
24 services in the state.

25 CONCLUSIONS OF LAW

26 1. X5 OpCo LLC and NovaTel Ltd., Inc. are public service corporations within the  
27 meaning of Article XV of the Arizona Constitution.

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1 IT IS FURTHER ORDERED upon notification from NovaTel Ltd., Inc. and X5 OpCo LLC  
 2 that the proposed transaction has been completed, the CC&N and tariff of NovaTel Ltd., Inc. be  
 3 cancelled. Upon cancellation of its CC&N, NovaTel Ltd., Inc. will no longer be authorized to provide  
 4 telecommunications services in Arizona and subject to the requirements of Decision Nos. 71911 and  
 5 72389.

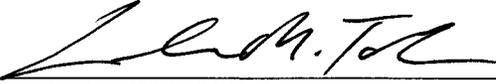
6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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 8 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

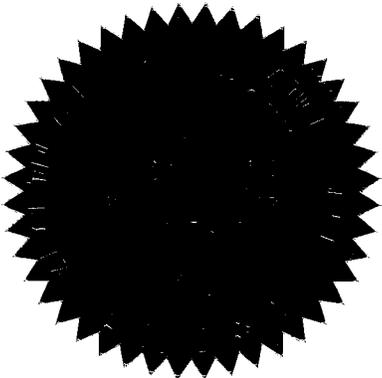
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 11 CHAIRMAN

  
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 COMMISSIONER

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 COMMISSIONER



15 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
 16 Director of the Arizona Corporation Commission, have  
 17 hereunto, set my hand and caused the official seal of this  
 18 Commission to be affixed at the Capitol, in the City of  
 19 Phoenix, this 13th day of May, 2016.

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 21 JODI JERICH  
 EXECUTIVE DIRECTOR

22 DISSENT: \_\_\_\_\_

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 24 DISSENT: \_\_\_\_\_

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1 SERVICE LIST FOR: X5 OpCo LLC and NovaTel Ltd., Inc.  
2 DOCKET NOS. T-20946A-15-0385 and T-20601A-15-0385

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