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BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Joint Application of X5 Solutions, Inc. and X5 OpCo LLC for Approval of Asset and Customer Transfer Transaction	Docket No. 15-_____ JOINT APPLICATION
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INTRODUCTION

X5 Solutions, Inc. (“X5” or “X5 Solutions” or “Transferor”) and X5 OpCo LLC (“X5 OpCo” or “Transferee,” jointly, “Applicants”), pursuant to the provisions at *Utah Code Ann.* § 54-4-30 and Utah Administrative Code R746-349-7, hereby respectfully request that the Utah Public Service Commission (“Commission”) expeditiously approve, to the extent necessary, a transaction (“Transaction” or “Transfer”) whereby Transferee will acquire substantially all of the assets and business of Transferor and its affiliate, X5 PDX, LLC (“Transferors”).¹ The Applicants anticipate

¹ X5 PDX, LLC does not provide telecommunications service in Utah.

and are working towards closing the Transaction as soon as it receives all required regulatory approvals.

This Transaction entails the acquisition of substantially all of the assets and business of X5 by a non-telecommunications provider pending a grant of a Certificate of Public Convenience and Necessity for authority to provide Utah intrastate telecommunications service to Transferee, to be filed separately. Following the grant of the proposed Transaction, Transferee will operate the assets of Transferors and will continue to provide domestic telecommunications services to commercial end user subscribers, wholesale telecommunications customers and interconnecting carriers. The Transferors' current organization, employees, customer and supplier contracts, service rates, terms, and conditions will be maintained by Transferee under new corporate ownership. The Transaction will provide additional capitalization enabling Transferee to innovate, expand operations and generally increase competitiveness. The Transaction will be entirely transparent to Transferors' subscribers and customers.

After the Transfer has been completed, Transferors will no longer provide regulated telecommunications services or IP-enabled services. As a result, Transferors request that they be allowed to withdraw from the telecommunications market, and that X5 Solutions' certificate of public convenience and necessity be cancelled. Transferor provided written notice to affected subscribers on February 13, 2015, which is not later than 30 days before the Transfer from the Transferor to the Transferee.

Applicants also request a waiver of *Utah Code Ann.* § 54-8b-18 and Utah Admin. Code R746-349-5, which are inapplicable to this transaction.

In support of this Application, Applicants state as follows.

I. DESCRIPTION OF THE APPLICANTS

A. X5 Solutions, Inc. (Transferor)

X5 Solutions is a Seattle, Washington-based privately-held corporation organized under the laws of the State of Washington on June 25, 2004. X5 Solutions and its affiliate, X5 PDX, LLC, provide local exchange and domestic interexchange telecommunications services primarily to commercial and governmental institution subscribers, wholesale telecommunications network facilities and services to carriers, and switched exchange access services to interconnecting carriers in the States of Washington, Oregon, and Utah. X5 PDX, LLC provides services primarily in the State of Oregon. X5 Solutions is authorized to provide telecommunications services in the State of Utah.

X5 SLC, LLC dba X5 Solutions was granted a Certificate of Public Convenience and Necessity on July 12, 2004 in Docket No. 04-2426-01. On April 18, 2014, X5 SLC, LLC dba X5 Solutions, notified the Commission that its operations were being consolidated into those of its parent corporation, X5 Solutions, Inc., and that it was is changing its name to its parent corporation's name X5 Solutions, Inc. on or about May 1, 2014. On May 1, 2014, the Commission acknowledged the name change request.²

B. X5 OpCo LLC (Transferee)

X5 OpCo LLC ("X5 OpCo") is a limited liability company formed under the laws of the State of Delaware in 2014. X5 OpCo is a wholly owned subsidiary of X5 Holdings LLC ("X5 Holdings") which is controlled by NewSpring Holdings Management Company LLC ("NewSpring"). NewSpring is a limited liability company organized under the laws of the State of Delaware. NewSpring is affiliated with NewSpring Holdings LLC, a private equity fund that

² See Letter from Gary L. Widerburg to Andrew O. Isar, Miller Isar, Inc. RE Docket No. 14-2426-01 (May 1, 2014).

seeks to partner with successful business owners and management teams to grow profitable businesses. X5 OpCo, X5 Holdings, and NewSpring do not currently provide telecommunications services. After consummation of the Transfer, X5 OpCo will manage Transferors' operations and business under its current organization. X5 OpCo concurrently with this Application is seeking authorization to provide telecommunications in the State of Utah.

II. CONTACT INFORMATION

For Transferor:

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For Transferee:

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III. REQUEST FOR APPROVAL OF TRANSACTION TO TRANSFER ASSETS AND CUSTOMERS

This Application is to seek approval of the Transaction (as described below) pursuant to R746-349-7. None of the Applicants are serving anywhere in Utah as incumbent local exchange carriers (“ILECs”).

Description of the Transaction

Transferors seek to sell, and Transferee seeks to acquire, substantially all of the assets and business of Transferors as an ongoing operation. Under the terms of the proposed acquisition, Transferors will sell the entirety of their interest in operational assets, customer and supplier contracts, and all of Transferors’ personnel will be transferred to Transferee. Following the grant of the proposed Transfer, and pending a grant of a Certificate of Public Convenience and Necessity to Transferee, Transferee will operate the assets and business of Transferors and will continue to provide domestic telecommunications services to commercial subscribers, wholesale carrier customers, and interconnecting carriers, and otherwise operate under Transferors’ current organization, and service rates, terms, conditions and authority. The Transaction will provide Transferee with additional capitalization needed to innovate, expand operations and generally increase competitiveness. The Transaction will be entirely transparent to Transferors’ subscribers and wholesale customers, as it will not result in any immediate change in service rates, terms, and conditions, and will not result in the discontinuance, reduction, loss, or impairment of service.

The transfer will take place as soon as all required regulatory approvals are received. The Transferors' customer base will receive notice of the Transaction in accordance with state requirements and the rules and regulations of the Federal Communications Commission ("FCC") and State of Utah. A draft customer notice letter is attached as **Exhibit 4**. Subscribers were notified on February 13, 2015, and thus will receive a minimum of 30 days' notice.

Effective as of March 16, 2015, the FCC approved Applicants' transfer of control application.³ Effective as of March 18, 2015, the State of Oregon approved Applicants' transfer of control application and granted X5 OpCo authority to operate as a competitive telecommunications provider. Effective as of February 1, 2015, X5 OpCo's registration as a competitive telecommunications company was granted by the Washington Utilities and Transportation Commission.

A copy of the application to the FCC and the FCC order granting transfer of control are attached hereto as **Exhibit 1**, a copy of the application to and order issued by the State of Oregon Public Utility Commission is attached hereto as **Exhibit 2**, and a copy of the transfer notification letter to and certificate of registration issued by the Washington Utilities and Transportation Commission are attached hereto as **Exhibit 3**.

IV. PUBLIC INTEREST CONSIDERATIONS

Applicants submit that the Transaction is consistent with the public interest. The Transaction will provide additional capitalization needed to expand services and operations, and enhance the ability to provide competitive telecommunications services to the public. Further, broad management experience will enable Transferee to explore new innovative service opportunities and provide added value to Transferors' subscribers and customers. The proposed

³ See *Notice of Domestic Section 214 Authorizations Granted*, Public Notice, DA 15-334, WC Docket Nos. 15-27 & 14-268 (Wireline Comp. Bur. Mar. 16, 2015).

transfer does not raise any competitive concerns. The only impact of the proposed transaction is that Transferors' business will obtain access to increased resources that will result in a stronger, more capable and robust company, capable of pursuing additional opportunities.

The Transaction will be entirely transparent to subscribers and customers. The Transaction will not result in any immediate change in service rates, terms, and conditions, and will not result in the discontinuance, reduction, loss, or impairment of service to subscribers or customers.

The public interest will also be served by expeditious consideration and approval of the Transaction. The proposed Transaction seeks to strengthen the competitive capabilities of the business being transferred to Transferee. Delays in obtaining regulatory approval could impede the initiatives planned following consummation of the Transaction. Such delays could further create uncertainty and risk to subscribers, customers, and employees.

For the foregoing reasons, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by an expeditious grant of the instant Joint Application. Applicants respectfully request streamlined and expedited treatment to permit Applicants to consummate the proposed transaction as soon as possible. In addition to the foregoing statement of the public interest, the Applicants ask the Commission to take notice of the applicable rule which provides that if this Application is unopposed, the Commission "will presume that approval of the transaction is in the public interest and will use the information contained in the application and accompanying documents as evidence to support a Commission order." R746-349-7(3).

V. INFORMATION REQUIRED BY R746-394-7

Pursuant to R746-394-7, Applicants provide the following information:

A. Identification That Neither Applicant Is An ILEC.

Applicants aver that neither the Applicants nor their affiliates are incumbent local exchange carriers (“ILECs”) or otherwise affiliated with ILECs.

B. Identification That Applicants Seek Approval Of This Joint Application Pursuant To This Rule.

Applicants confirm that they seek approval of the application pursuant to the informal adjudication process set forth in R746-394-7.

C. A Reasonably Detailed Description Of The Transaction For Which Approval Is Sought.

A detailed description of the Transaction is provided above in Section III.

D. A Copy Of Other Filings Required By The Federal Communications Commission Or Any Other State Utility Regulatory Agency In Connection With The Transaction.

Please refer to Section III above and Exhibits 1, 2, 3, and 4 below.

E. Copies Of Any Notices, Correspondence, Or Orders From Any Federal Agency Or Any Other State Utility Regulatory Agency Reviewing The Transaction Which Is The Subject Of The Application.

A copy of the FCC order approving the transaction is attached in Exhibit 1, a copy of the Oregon order approving the transaction and granting X5 OpCo authority to operate as a competitive telecommunications provider is attached in Exhibit 2, and a copy of the certificate of registration issued to X5 OpCo by the Washington Utilities and Transportation Commission is attached in Exhibit 3. To the extent requested by the

Commission, Applicants will provide any further orders or similar actions approving or denying approval of the Transaction.

VI. REQUEST FOR WAIVER OF SLAMMING RULES

As noted, X5 Solutions' subscribers are to remain X5 OpCo's subscribers without a change in service upon approval of the instant Application and grant of X5 OpCo's separate application for a Certificate of Public Convenience and Necessity. Applicants respectfully request, to the extent necessary, that the Commission grant a waiver of *Utah Code Ann.* § 54-8b-18 and Utah Admin. Code R746-349-5 and any other applicable anti-slamming regulations as these regulations are inapplicable to this Transaction.

VII. CONCLUSION

For the reasons stated above, the Applicants submit that the public interest, convenience and necessity will be furthered by the Transaction and respectfully request that the Commission expeditiously approve this Application.

Respectfully submitted,

/s/ Richard Reynolds

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and

/s/ Walter P. Maner

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Dated: March 20, 2015

LIST OF EXHIBITS

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| Exhibit 1 | Federal Communications Commission Application and Approval of Transfer of Control |
| Exhibit 2 | State of Oregon Application and Order |
| Exhibit 3 | State of Washington Application and Certificate of Registration |
| Exhibit 4 | Customer Notification Letter |
| Exhibit 5 | Verification of Richard F. Reynolds |
| Exhibit 6 | Verification of Walter P. Maner |