

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| <p>In re:</p> <p>XTERA COMMUNICATIONS, INC., <i>et al.</i>,</p> <p style="text-align: right;">Debtors.¹</p> | <p>Chapter 11</p> <p>Case No. 16-12577 (KJC)</p> <p>(Jointly Administered)</p> |
| <p>In re:</p> <p>XTERA COMUNICACOES DO BRASIL LTDA</p> <p>Tax Identification No.: 18-709-301/000154</p> | <p>Chapter 11</p> <p>Case No. 16-12632 (KJC)</p> <p>Joint Administration Requested</p> <p>Objection Deadline: December 8, 2016 at 4:00pm Hearing Date: December 15, 2016 at 1:30pm (ET)</p> |

**DEBTORS' MOTION PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY
CODE FOR AN ORDER DIRECTING THAT CERTAIN ORDERS IN THE CHAPTER
11 CASES OF XTERA COMMUNICATIONS, INC. BE MADE APPLICABLE TO
ADDITIONAL DEBTOR IN SUBSEQUENTLY FILED CASE**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their proposed counsel DLA Piper LLP (US), hereby submit this motion (this “Motion”) for the entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), requesting a determination that certain orders entered in the chapter 11 cases jointly administered as *In re Xtera Communications, Inc. et al.* (the “Xtera Cases”) are applicable to the chapter 11 case of Xtera Comunicacoes do Brasil LTDA (“Xtera Brasil”). In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Joseph R.*

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Xtera Communications, Inc. (4611); Xtera Communications, Ltd. (9610); Xtera Communications Canada, Ltd. (2053); Xtera Communications Hong Kong Ltd. (7411); PMX Holdings, Ltd (4611); Azea Networks, Inc. (7821); Neovus, Inc. (2940); and Xtera Asia Holdings, LLC (4611). The mailing address for the Debtors, solely for purposes of notices and communications, is 500 W. Bethany Drive Suite 100 Allen, TX 75013.

Chinnici in Support of Chapter 11 Petitions and First Day Pleadings [D.I. 12] (the “First Day Declaration”).² In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

3. Venue of the chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal predicate for the relief sought herein is section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

I. The Chapter 11 cases

5. On November 15, 2016 (the “Petition Date”), Xtera Communications, Inc., Xtera Communications, Ltd., Xtera Communications Canada, Ltd., Xtera Communications Hong Kong Ltd., PMX Holdings, Ltd., Azea Networks, Inc., Neovus, Inc. and Xtera Asia Holdings, LLC (the “Original Debtors”) filed commenced voluntary petitions for relief under chapter 11 of the

² Each capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declarations, as applicable.

Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.

6. Additional factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the First Day Declaration, which is fully incorporated herein by reference.

II. Application of Certain Orders Previously Entered to the Additional Debtors

7. On the Petition Date, the Original Debtors filed a number of motions (the “First Day Motions”) requesting relief to ease their transition into chapter 11. On November 18, 2016, the Court entered the below orders (the “Entered Orders”) in the *In re Xtera Communications Inc. et al.* case, authorizing the relief requested in the First Day Motions:

- a. *Order Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor* [D.I. 43];
- b. *Order Authorizing Retention and Appointment of Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent to the Debtors* [D.I. 44];
- c. *Order Confirming the Administrative Expense Priority Status of the Debtors Undisputed Obligations for the Postpetition Delivery of Goods and Services* [D.I. 45];
- d. *Interim Order(i) Authorizing Debtors to (a) Maintain Existing Insurance Policies and Pay all Insurance Obligations Arising Thereunder, and (b) Renew, Revise, Extend, Supplement, Change or Enter into New Insurance Policies and (ii) Granting Certain Related Relief* [D.I. 46];

- e. *Interim Order Authorizing the Debtors to Pay Certain Pre-Petition Taxes and Fees* [D.I. 47];
- f. *Interim Order (a) Authorizing the Continued Use of the Debtors Cash Management System, Existing Bank Accounts and Business Forms; and (b) Extending the Time to Comply with the Requirements of Section 345(b) of the Bankruptcy Code* [D.I. 48];
- g. *Interim Order Authorizing Debtors to Pay Prepetition Wages, Compensation, and Employee Benefits* [D.I. 49]; and
- h. *Interim Order (i) Authorizing the Debtors to Obtain Postpetition Financing, (ii) Granting Adequate Protection to the Prepetition Secured Parties, (iii) Granting Related Relief and (iv) Scheduling a Final Hearing* [D.I. 55].

8. The Debtors have chosen to seek to have the relief granted in certain motions heard by the Court apply to Xtera Brasil in an effort to eliminate the filing of duplicative applications and motions and, therefore, reduce the burdens on this Court and on the parties in interest. This Motion seeks to have the Entered Orders apply to the chapter 11 case of Xtera Brasil. Assuming joint administration of the Debtors' cases, the Debtors seek application of the First Day Orders as if Xtera Brasil was a Debtor as defined therein, with the limited exception that such orders be effective as of the filing date of Xtera Brasil's chapter 11 petition. The relief set forth in each of the First Day Orders is necessary for Xtera Brasil to experience a smooth transition into chapter 11 and to achieve a successful reorganization for the benefit of all parties in interest.

RELIEF REQUESTED

9. By this Motion, the Debtors seek entry of an order requesting a determination that the Entered Orders are applicable to Xtera Brasil.

BASIS FOR RELIEF

10. Section 105(a) of the Bankruptcy Code provides, in relevant part: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of a debtor’s assets. *See, e.g., In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *Bird v. Crown Convenience (In re NWFEX, Inc.)*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy . . . is that equitable principles govern”); *In re Cooper Properties Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (“[T]he Bankruptcy Court is one of equity and as such it has a duty to protect whatever equities a debtor may have a property for the benefit of its creditors as long as the protection is implemented in a manner consistent with the bankruptcy laws.”).

11. Entry of an order directing that certain orders entered in the Original Debtors’ cases be made applicable to Xtera Brasil in its chapter 11 case will obviate the need for duplicative notices, motions, applications, and orders to be filed in this case. The Debtors simply seek to save considerable time and expense for their estates and to reduce the burden on the Court and parties in interest by proceeding in this manner. Xtera Brasil requires the protections and authorizations that are set forth in the First Day Orders to enter chapter 11 in an orderly manner. It is not surprising that Xtera Brasil would seek the substantive relief granted in the First

Day Orders, which address many of the “first day” matters that most debtors must handle. For example, the orders deal with, among other things, the continuation of the current cash management systems, waiver of the requirement to file individual lists of creditors, and retention of a claims and noticing agent. Xtera Brasil requests that the Court consider this Motion at the “second day” hearing scheduled in the Xtera Cases on December 15, 2016, providing parties in interest over twenty days to respond and object rather than two days, as typical when debtors seek such “first day” relief.

12. Had Xtera Brasil commenced its case at the same time as the Original Debtors, it would have been a movant with respect to all the First Day Motions. By proceeding in the manner of this Motion, the Debtors request that the Court extend the previously Entered Orders to include Xtera Brasil, thereby streamlining the motion practice for the requested relief, while at the same time providing the same requisite facts and justification for such relief as if Xtera Brasil were one of the Original Debtors filing the aforementioned motions and affidavits. Xtera Brasil is finalizing the bank account, insurance, and tax information necessary to support its request to be granted the relief afforded in the Entered Orders. If this Motion is granted, Xtera Brasil will file a notice of additional schedules and exhibits reflecting the information to be incorporated into each First Day Motion and Entered Order, as applicable.

13. The Debtors believe that the relief requested herein is appropriate to carry out the provisions of the Bankruptcy Code. Similar motions and procedures have been authorized in other complex chapter 11 cases. *See, e.g., In re Tribune Company, et al.*, Case No. 08-13141 (KJC) (Bankr. D. Del. Oct. 14, 2009) [Docket No. 2333]; *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Feb. 25, 2009) [Docket No. 2929].

14. For these reasons, the Debtors submit that the relief requested in this Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest and, therefore, should be granted.

NOTICE

15. As of the filing of this Motion, no trustee, examiner, or official committee of unsecured creditors has been appointed in these bankruptcy cases. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to H.I.G. European Capital Partners LLP, as DIP lender; (iii) counsel to Pacific Western Bank as successor in interest by merger to Square 1 Bank, as senior lender; (iv) counsel to Horizon Funding Trust 2013-1, LLC as subordinated lender; (v) counsel to Wilmington Trust, National Association, as administrative agent and collateral agent to that certain Debtor-in-Possession Credit Agreement dated as of November 18, 2016 between Xtera Communications, Inc. and Wilmington Trust, National Association.; (vi) counsel to the Official Committee of Unsecured Creditors; (vii) the Internal Revenue Service; and (viii) the United States Attorney for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as is just and proper.

Dated: November 23, 2016
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Stuart Brown

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*Proposed Counsel to Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| <p>In re:</p> <p>XTERA COMMUNICATIONS, INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p> | <p>Chapter 11</p> <p>Case No. 16-12577 (KJC)</p> <p>(Jointly Administered)</p> |
| <p>In re:</p> <p>XTERA COMUNICACOES DO BRASIL LTDA</p> <p>Tax Identification No.: 18-709-301/000154</p> | <p>Chapter 11</p> <p>Case No. 16-12632 (KJC)</p> <p>Joint Administration Requested</p> <p>Related D.I.: ____</p> |

**ORDER DIRECTING THAT CERTAIN ORDERS ENTERED IN THE CHAPTER 11
CASE OF XTERA COMMUNICATIONS INC. BE MADE APPLICABLE TO
ADDITIONAL DEBTOR IN SUBSEQUENTLY FILED CASE**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order, pursuant to section 105(a) of the Bankruptcy Code, directing that certain orders entered in the chapter 11 cases of the Original Debtors be made applicable to the Xtera Brasil, all as more fully set forth in the Motion; and upon consideration of the Motion and all pleadings related thereto, including the Declarations; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The following orders entered in the chapter 11 cases jointly administered as *In re Xtera Communications Inc. et al.* are hereby made applicable to Xtera Comunicacoes do Brasil LTDA, Case No. 16-_____ (KJC) effective as November 23, 2016, as if Xtera Comunicacoes do Brasil LTDA was a debtor as defined and referred to in the following orders entered by the Court in *In re Xtera Communications Inc. et al.*, Case No. 16-12577:
 - a. *Order Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor* [D.I. 43];
 - b. *Order Authorizing Retention and Appointment of Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent to the Debtors* [D.I. 44];
 - c. *Order Confirming the Administrative Expense Priority Status of the Debtors Undisputed Obligations for the Postpetition Delivery of Goods and Services* [D.I. 45];
 - d. *Interim Order(i) Authorizing Debtors to (a) Maintain Existing Insurance Policies and Pay all Insurance Obligations Arising Thereunder, and (b)*

Renew, Revise, Extend, Supplement, Change or Enter into New Insurance Policies and (ii) Granting Certain Related Relief [D.I. 46];

- e. *Interim Order Authorizing the Debtors to Pay Certain Pre-Petition Taxes and Fees [D.I. 47];*
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- g. *Interim Order Authorizing Debtors to Pay Prepetition Wages, Compensation, and Employee Benefits [D.I. 49]; and*
- h. *Interim Order (i) Authorizing the Debtors to Obtain Postpetition Financing, (ii) Granting Adequate Protection to the Prepetition Secured Parties, (iii) Granting Related Relief and (iv) Scheduling a Final Hearing [D.I. 55].*

3. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

4. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2016
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE