

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

XTERA COMMUNICATIONS, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 16-12577

(Joint Administration Requested)

**DEBTORS' APPLICATION  
FOR ENTRY OF AN ORDER PURSUANT  
TO 28 U.S.C. § 156(C) APPROVING THE RETENTION  
AND APPOINTMENT OF EPIQ BANKRUPTCY SOLUTIONS,  
LLC AS THE CLAIMS AND NOTICING AGENT TO THE DEBTORS,  
EFFECTIVE *NUNC PRO TUNC* TO THE COMMENCEMENT DATE**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) file this application (the “**Application**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), approving the services agreement (the “**Services Agreement**”) attached as **Exhibit 1** to **Exhibit A** between the Debtors and Epiq Bankruptcy Solutions, LLC (“**Epiq**”) as claims and noticing agent (“**Claims and Noticing Agent**”) for the Debtors in lieu of the Clerk (the “**Clerk**”) of the United States Bankruptcy Court for the District of Delaware and for related relief, effective *nunc pro tunc* to the date hereof (the “**Commencement Date**”). In support of this Application, the Debtors rely on the declaration of Brian Karpuk (the “**Karpuk Declaration**”), attached hereto as **Exhibit B** and incorporated

---

<sup>1</sup> 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.

herein by reference. In further support of the Application, the Debtors respectfully state as follows:<sup>2</sup>

### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the District of Delaware 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 February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to Rule 9013-l(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.

3. The bases for the relief requested herein are section 156(c) of title 28 of the United States Code (the “**Judicial Code**”), section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Local Rules 2002-l(f) and 9013-1(m), and the Court’s *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c)*, instituted by the Clerk on February 1, 2012 (the “**Claims Agent Protocol**”).

---

<sup>2</sup> The facts and circumstances supporting this Application are set forth in the *Declaration of Joseph R. Chinnici in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration filed contemporaneously herewith.

**Relief Requested**

4. By this Application, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, approving the Services Agreement and the Debtors' retention and employment of Epiq as the Claims and Noticing Agent for the Debtors and their chapter 11 cases in lieu of the Clerk, *nunc pro tunc* to the Commencement Date and granting related relief.

**Background**

5. On the date hereof (as defined, the Commencement Date), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this Application, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

**Services to be Provided**

6. This Application pertains only to the work to be performed by Epiq under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f) and the Claims Agent Protocol, and any work to be performed by Epiq outside of this scope is not covered by this Application or by any order granting approval hereof.<sup>3</sup> Specifically, Epiq will perform, to the extent the Debtors or the Clerk request, the following services in its role as

---

<sup>3</sup> The Debtors will file a separate application whereby the Debtors seek to employ Epiq to provide certain bankruptcy administrative services to the Debtors during these chapter 11 cases.

Claims and Noticing Agent (collectively, the “**Claims and Noticing Services**”), as well as all quality control relating thereto:

- (a) prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- (b) maintain an official copy of the Debtors’ schedules of assets and liabilities and statements of financial affairs (collectively, the “**Schedules**”), listing the Debtors’ known creditors and the amounts owed thereto;
- (c) maintain (i) a list of all potential creditors, equity holders and other parties-in-interest and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party-in-interest or the Clerk;
- (d) furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) for *all* notices, motions, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk an affidavit or certificate of service within seven business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in

alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;

- (g) process all proofs of claim received, including those received by the Clerk, check said processing for accuracy and maintain the original proofs of claim in a secure area;
- (h) maintain the official claims register for each Debtor (collectively, the “**Claims Registers**”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*), (vi) the applicable Debtor, and (vii) any disposition of the claim;
- (i) implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (j) record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (k) relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Epiq, not less than weekly;
- (l) upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk’s review (upon the Clerk’s request);
- (m) monitor the Court’s docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (n) identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- (o) assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (p) if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk’s office within three (3) days of notice to Epiq of entry of the order converting the cases;

- (q) thirty (30) days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Epiq as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- (r) within seven (7) days of notice to Epiq of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the chapter 11 cases; and
- (s) at the close of these chapter 11 cases, box and transport all original documents, in proper format, as provided by the Clerk's office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, Missouri 64064; or (ii) any other location requested by the Clerk's office.

7. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Epiq. For the avoidance of doubt, Epiq shall not employ any past or present employee of the Debtors for work that involves the Debtors' bankruptcy cases.

8. Epiq will follow the notice and claim procedures that conform to the guidelines promulgated by the Clerk's office or as otherwise directed by the Court.

#### **Epiq's Qualifications**

9. Epiq is one of the country's leading chapter 11 administrators, with significant experience in noticing, claims administration, soliciting, balloting, and facilitating other administrative aspects of the chapter 11 cases. Epiq has substantial experience providing services, including claims and noticing services, in matters of comparable size and complexity to these chapter 11 cases.

10. Epiq serves or has served as the official claims and noticing agent in many large bankruptcy cases filed in this district, including but not limited to: *In re Dex Media, Inc.*, Case No. 16-11200 (KG) (Bank. D. Del. May 15, 2016); *In re Fresh & Easy, LLC*, Case No. 15-12220

(BLS) (Bank. D. Del. October 30, 2015); *In re Allen Systems Group, Inc.*, Case No. 15-10332 (KJC) (Bankr. D. Del. Feb. 18, 2015); *In re Deb Stores Holding, LLC*, Case No. 14-12676 (KG) (Bankr. D. Del. Dec. 4, 2014); *In re AWI Delaware, Inc.*, Case No. 14-12092 (KJC) (Bankr. D. Del. Sept. 9, 2014); *In re Natrol, Inc.*, Case No. 14-11446 (BLS) (Bankr. D. Del. June 11, 2014); *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del, May 2, 2014); (*In re F & H Acquisition Corp.*, Case No. 13-13220 (KG) (Bankr. D. Del. Dec. 17, 2013); *In re TPO Hess Holdings, Inc.*, Case No. 13-11327 (KJC) (Bankr. D. Del. May 23, 2013); *In re The SCOOTER Store Holdings, Inc.*, Case No. 13-10904 (PJW) (Bankr. D. Del. April 15, 2013); *In re Dex One Corp.*, Case No. 13-10533(KG) (Bankr. D. Del. Apr. 10, 2013); *In re SuperMedia Inc.*, Case No. 13-10545 (KG) (Bankr. D. Del. Apr. 10, 2013); *In re Rotech Healthcare Inc.*, Case No. 13-10741 (PJW) (Bankr. D. Del, April 8, 2013); *In re Namco LLC*, Case No. 13-10610 (PJW) (Bankr. D. Del. March 27, 2013).

11. By appointing Epiq as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Clerk will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

#### **Professional Compensation**

12. The Debtors respectfully request that the undisputed fees and expenses incurred by Epiq in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to section 156(c) of the Judicial Code and Bankruptcy Code section 503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the Court. Epiq agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**"), counsel

for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Services Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute. If resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Commencement Date, the Debtors provided Epiq a retainer in the amount of \$3,000.00. Epiq seeks to first apply the retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, Epiq may hold such retainer under the Services Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Services Agreement.

#### **Indemnification**

14. As part of the overall compensation payable to Epiq under the terms of the Services Agreement, the Debtors have agreed to certain indemnification and contribution obligations as set forth in the Services Agreement, to the extent permitted by applicable law and as modified in the proposed order attached hereto as **Exhibit A**.

15. The terms of the Services Agreement and indemnification provisions included therein were negotiated at arm's-length between the Debtors and Epiq, and the Debtors respectfully submit that these provisions of the Services Agreement are reasonable and in the best interests of the Debtors, their estates, and their creditors. Moreover, consistent with the practice in this jurisdiction, the Debtors requested, and Epiq has agreed, that the Court approve the indemnification provisions reflected in the Services Agreement subject to the modifications set forth in the proposed order attached hereto as **Exhibit A**. The Debtors believe that the proposed modifications to the indemnification provisions of the Services Agreement are



appropriate under the circumstances, consistent with recent orders entered in this jurisdiction, and should be approved.

**Disinterestedness**

16. Although the Debtors do not propose to employ Epiq under Bankruptcy Code section 327 pursuant to this Application (such retention will be sought by separate application), Epiq has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Karpuk Declaration, Epiq has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

17. Moreover, in connection with its retention as Claims and Noticing Agent, Epiq represents in the Karpuk Declaration, among other things, that:

- (a) Epiq is not a creditor of the Debtors;
- (b) Epiq will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- (c) by accepting employment in these chapter 11 cases, Epiq waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- (d) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Epiq will not be an agent of the United States and will not act on behalf of the United States;
- (e) Epiq will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- (f) Epiq is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;

- (g) in its capacity as Claims and Noticing Agent in these chapter 11 cases, Epiq will not intentionally misrepresent any fact to any person;
- (h) Epiq shall be under the supervision and control of the Clerk's office with respect to the receipt and recordation of claims and claim transfers;
- (i) Epiq will comply with all requests of the Clerk's office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) none of the services provided by Epiq as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk's office.

Epiq will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

**Compliance with the Claims Agent Protocol**

18. The Debtors represent that this Application complies with the Claims Agent Protocol and conforms to the standard application pursuant to section 156(c) of the Judicial Code used in this district. To the extent that there is any inconsistency between this Application, the Order and the Services Agreement, then the terms of the Order shall govern.

**Basis for Relief**

19. This Application is made pursuant to section 156(c) of the Judicial Code, section 105(a) of the Bankruptcy Code, Local Rule 2002-1(f), and the Claims Agent Protocol for a proposed order appointing Epiq as the claims and noticing agent for the Debtors in their chapter 11 cases so that Epiq may assume full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in these chapter 11 cases.

20. Section 156(c) of the Judicial Code, in relevant part, provides:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The

utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

21. Bankruptcy Code section 105(a), in relevant part, provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

22. Local Rule 2002-1(f) provides:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (which can be found on the Court's website) and shall perform the [Claims and Noticing Services].

Local Rule 2002-1(f).

23. The Court has promulgated a protocol “to ensure the use of competitive process in the selection of claims agents in instances where the Court has authorized such use” under the Claims Agent Protocol. *See* Claims Agent Protocol. In accordance with the Claims Agent Protocol, prior to the selection of Epiq, the Debtors solicited, reviewed, and compared engagement proposals from at least three court-approved claims and noticing agents, including Epiq, to ensure selection through a competitive process. The Debtors submit, based on the engagement proposals obtained and reviewed, that Epiq rates are competitive and reasonable

given Epiq's high quality of services and substantial expertise. The terms of Epiq's retention are set forth in the Services Agreement; *provided, however*, that by this Application Epiq is seeking approval solely of the terms and provisions of the Services Agreement as set forth in this Application and the proposed order as set forth in **Exhibit A**.

24. By retaining and appointing Epiq as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices will be expedited, and the Clerk and the Debtors will be relieved of the burdens associated with the Claims and Noticing Services. Accordingly, the Debtors will be able to devote their full attention and resources to their chapter 11 process.

#### **Nunc Pro Tunc Relief is Appropriate**

25. Pursuant to the Debtors' request, the Epiq has served in that capacity since the Commencement Date with assurances that the Debtors would seek approval of its employment and retention, effective *nunc pro tunc* to the Commencement Date, so that the Claims and Noticing Agent may be compensated for services prior to entry of an order approving Epiq's retention. The Debtors believe that no party in interest will be prejudiced by the granting of the *nunc pro tunc* employment, as provided herein, because the Claims and Noticing Agent has provided and continues to provide valuable services to the Debtors' estates in the interim period.

26. Courts in this jurisdiction have routinely approved *nunc pro tunc* employment similar to that requested herein in matters comparable to this matter. *See, e.g., In re Trump Entertainment Resorts, Inc.*, No. 14-12103 (KG) (Bankr. D. Del. Sept 10, 2014) (approving *nunc pro tunc* employment of a claims and noticing agent to perform claims and noticing services); *In re AWI Delaware, Inc.*, No. 14-12092 (KJC) (Bankr. D. Del. Sept. 10, 2014) (same); *In re Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same); *In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Mar. 4, 2014) (same); *In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Sept. 4, 2013) (same); *In re Dex One Corp.*, No. 13-10533

(KG) (Bankr. D. Del. Mar. 19, 2013) (same); *In re Satcon Tech. Corp.*, No. 12-12869 (KG) (Bankr. D. Del. Oct. 18, 2012) (same); *In re Prince Sports, Inc.*, No. 12-11439 (KJC) (Bankr. D. Del. May 2, 2012) (same).

27. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Judicial Code, the Local Rules, and the Claims Agent Protocol. Accordingly, the Debtors respectfully request entry of an order pursuant to section 156(c) of the Judicial Code, Local Rule 2002-1(f), and the Claims Agent Protocol authorizing the Debtors to retain and employ the Claims and Noticing Agent, effective *nunc pro tunc* to the Commencement Date.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

28. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

29. No trustee, examiner, or official committee of unsecured creditors has been appointed in these Chapter 11 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 and its affiliates, as DIP lenders; (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 15, 2016 between Xtera Communications, Inc. and Wilmington Trust, National Association; (vi) the parties included on the Debtors' consolidated list of twenty (20)

largest unsecured creditors; (vii) the Internal Revenue Service; and (viii) the United States Attorney for the District of Delaware and all other states in which the Debtors operate. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

**No Prior Request**

30. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: November 15, 2016  
Wilmington, Delaware

  
\_\_\_\_\_  
Jon Hopper  
CEO, Xtera Communications, Inc.

**EXHIBIT A**

**Proposed Order**



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

In re:

XTERA COMMUNICATIONS, INC., *et al.*

Debtors.

Chapter 11

Case No. \_\_\_\_\_

Related D.I.:

**ORDER PURSUANT TO 28 U.S.C. § 156(C)  
APPROVING THE RETENTION AND APPOINTMENT  
OF EPIQ BANKRUPTCY SOLUTIONS, LLC AS THE CLAIMS AND  
NOTICING AGENT TO THE DEBTORS, EFFECTIVE *NUNC PRO TUNC*  
TO THE COMMENCEMENT DATE AND GRANTING RELATED RELIEF**

Upon the application (the “**Application**”)<sup>1</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order (this “**Order**”) approving the Services Agreement and authorizing the Debtors to retain Epiq Bankruptcy Solutions, LLC (“**Epiq**”) as claims and noticing agent (“**Claims and Noticing Agent**”) for the Debtors in these chapter 11 cases, *nunc pro tunc* to the Commencement Date and granting related relief; all as more fully set forth in the Application; and upon the First Day Declaration; and upon the Karpuk Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*<sup>1</sup> from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in

<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at any hearing before this Court (the "**Hearing**"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. Notwithstanding the terms of the Services Agreement attached hereto as **Exhibit 1**, the Application is approved solely as set forth in this Order.
3. The Debtors are authorized pursuant to section 156(c) of the Judicial Code, Bankruptcy Code sections 105(a) and 363, Local Rule 2002-1(f) and the Claims Agent Protocol to retain Epiq as Claims and Noticing Agent effective *nunc pro tunc* to the Commencement Date under the terms of the Services Agreement attached hereto as **Exhibit 1** (as modified by this Order), and Epiq is authorized and directed to perform the Claims and Noticing Services as described in the Application.
4. Epiq shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

5. Epiq is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

6. Epiq is authorized to take such other action to comply with all duties set forth in the Application.

7. The Debtors are authorized to compensate Epiq in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Epiq and the rates charged for each, and to reimburse Epiq for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Epiq to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

8. Epiq shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party in interest who specifically requests service of the monthly invoices.

9. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or monthly invoices; *provided, however*, that the parties may seek resolution of the matter from this Court if resolution is not achieved.

10. Notwithstanding paragraph 10.3 in the Services Agreement, any controversy or claim arising out of the Services Agreement shall first be submitted to this Court for resolution and, if this Court permits, to arbitration in accordance with the terms of the Services Agreement

11. Pursuant to Bankruptcy Code section 503(b)(1)(A), the fees and expenses of Epiq under this Order shall be an administrative expense of the Debtors' estates.

12. Epiq may apply its retainer to all prepetition invoices, and thereafter, Epiq may hold its retainer under the Service Agreement during the chapter 11 case as security for the payment of fees and expenses incurred under the Service Agreement.

13. The indemnification provisions in the Services Agreement are approved, subject to the following modifications, applicable during the pendency of these cases:

- (a) Epiq shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.
- (b) Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify Epiq, or provide contribution or reimbursement to Epiq, for any claim or expense that is: (a) judicially determined (the determination having become final) to have arisen from Epiq's gross negligence, willful misconduct, or fraud; (b) for a contractual dispute in which the Debtors allege the breach of Epiq's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination under (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which Epiq should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by this Order.
- (c) Notwithstanding anything to the contrary in the Services Agreement, Epiq shall not be entitled to any limitation of liability.
- (d) If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal); or (b) the entry of an order closing these chapter 11 cases, Epiq believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including the advancement of defense costs, Epiq must file an application therefor in this Court, and the Debtors may not pay any such amounts to Epiq before the entry of an order by this Court approving the payment. This paragraph "(c)" is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by Epiq for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Epiq. All parties in interest shall retain the right

to object to any demand by Epiq for indemnification, contribution, or reimbursement.

14. In the event Epiq is unable to provide the services set out in this Order, Epiq will immediately notify the Clerk and the Debtors' attorney and, upon approval of this Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

15. Epiq shall not cease providing the Claims and Noticing Services during these cases for any reason without prior order of this Court authorizing Epiq to do so; *provided, however,* that Epiq may seek such an order on expedited notice by filing a request with this Court with notice of such request to be served on the Debtors, the Office of the United States Trustee, and any official committee of creditors appointed, if any, in these cases by facsimile or overnight delivery; provided further, that except as expressly provided herein, the Debtors and Epiq may otherwise terminate or suspend other services as provided under the Engagement Letter.

16. After entry of an order terminating Epiq's services as the Notice and Claims Agent, upon the closing of these cases, or for any other reason, Epiq shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable.

17. In the event of any inconsistency between the Services Agreement, the Application and this Order, this Order shall govern.

18. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

20. The Debtors and Epiq are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Services Agreement**



# EPIQ SYSTEMS

## STANDARD SERVICES AGREEMENT

This Standard Services Agreement is being entered into by and between the undersigned parties, referred to herein as “Epiq” and “Client” as of the Effective Date, as defined below. In consideration of the premises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### General Terms and Conditions

#### 1. Services.

In accordance with the charges, terms and conditions contained in this agreement and in the schedule(s) attached hereto (collectively, the “Agreement”), Epiq agrees to furnish Client with the services set forth on The Services Schedule hereto (the “Services”) in connection with a corporate restructuring. Services will be provided on an as needed basis and upon request or agreement of Client. Charges for the Services will be based on the pricing schedule provided to Client hereto (the “Pricing Schedule”). The Pricing Schedule sets forth individual unit pricing for each of the Services provided by Epiq and represents a bona fide proposal for that Service. Client may request separate Services or all of the Services reflected in the Pricing Schedule.

#### 2. Term.

This Agreement shall become effective on the date of its acceptance by both Epiq and Client; provided, however, Epiq acknowledges that Bankruptcy Court approval of its engagement may be required in order for Epiq to be engaged in a chapter 11 proceeding. The Agreement shall remain in effect until terminated: (a) by Client, on thirty (30) days’ prior written notice to Epiq and, to the extent Epiq has been retained by Bankruptcy Court order, entry of an order of the Bankruptcy Court discharging Epiq; or (b) by Epiq, on ninety (90) days’ prior written notice to Client and, to the extent Epiq has been retained by Bankruptcy Court order, entry of an order of the Bankruptcy Court discharging Epiq.

#### 3. Charges.

- 3.1 For the Services and materials furnished by Epiq under this Agreement, Client shall pay the fees, charges and costs set forth in the Pricing Schedule. Epiq will bill Client monthly. All invoices shall be due and payable upon receipt.
- 3.2 Epiq reserves the right to make reasonable increases to the unit prices, charges and professional service rates reflected in the Pricing Schedule on an annual basis effective January 2, 2017. If such annual increases exceed 10% from the prior year’s level, Epiq shall provide sixty (60) days’ prior written notice to Client of such proposed increases.





- 3.3 Client agrees to pay Epiq for all materials necessary for performance of the Services under this Agreement (other than computer hardware and software) and any reasonable out of pocket expenses including, without limitation, transportation, long distance communications, printing, photocopying, fax, postage and related items.
- 3.4 Before and during the pendency of the Client's case pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Case"), the Client shall receive a *5% courtesy discount* off hourly fees on each monthly invoice.
- 3.5 Client shall pay or reimburse all taxes applicable to services performed under this Agreement and, specifically, taxes based on disbursements made on behalf of Client, notwithstanding how such taxes may be designated, levied or based. This provision is intended to include sales, use and excise taxes, among other taxes, but is not intended to include personal property taxes or taxes based on net income of Epiq.
- 3.6 Client shall pay to Epiq any actual charges (including fees, costs and expenses as set forth in the Pricing Schedule) related to, arising out of or resulting from any Client error or omission. Such charges may include, without limitation, print or copy re-runs, supplies, long distance phone calls, travel expenses and overtime expenses for work chargeable at the rates set forth on the Pricing Schedule.
- 3.7 In the event of termination pursuant to Section 2 hereof, Client shall be liable for all amounts then accrued and/or due and owing to Epiq under the Agreement.
- 3.8 To the extent permitted by applicable law, Epiq shall receive a retainer in the amount of \$3,000 (the "Retainer") that may be held by Epiq as security for Client's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. Epiq shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, Epiq shall return to Client any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

#### **4. Confidentiality.**

Client data provided to Epiq during the term of this Agreement in connection with the Services ("Client Data") shall be maintained confidentially by Epiq in the same manner and to the same level as Epiq safeguards data relating to its own business; provided, however, that if Client Data is publicly available, was already in Epiq's possession or known to it, was required to be disclosed by law, was independently developed by Epiq without use or reference to any Client Data, or was rightfully obtained by Epiq from a third party, Epiq shall bear no responsibility for public disclosure of such data. Client agrees that Epiq shall not be liable for damages or losses of any nature whatsoever arising out of the unauthorized acquisition or use of any Client Data or other Client materials provided to Epiq in the performance of this Agreement.



## **5. Title to Property.**

Epiq reserves all property rights in and to all materials, concepts, creations, inventions, works of authorship, improvements, designs, innovations, ideas, discoveries, know-how, techniques, programs, systems and other information, including, without limitation, data processing programs, specifications, applications, processes, routines, sub-routines, procedural manuals and documentation furnished or developed by Epiq for itself or for use by Client (collectively, the "Property"). Charges paid by Client do not vest in Client any rights to the Property, it being expressly understood that the Property is made available to Client under this Agreement solely for Client's use during and in connection with each use of the Epiq equipment and services. Client agrees not to copy or permit others to copy any of the Property.

## **6. Disposition of Data.**

- 6.1 Client is responsible for the accuracy of the programs and Client Data it provides or gives access to Epiq and for the output resulting from such data. Client shall initiate and maintain backup files that would allow Client to regenerate or duplicate all programs and Client Data which Client provides or gives access to Epiq. Client agrees, represents and warrants to Epiq that, prior to delivery of any Client Data to Epiq, it has full authority to deliver Client Data to Epiq. Client agrees, represents and warrants to Epiq that it has obtained binding consents, permits, licenses and approvals from all necessary persons, authorities or individuals, and has complied with all applicable policies, regulations and laws, required by Client, in order to allow Epiq to use all Client Data delivered to it in connection with its Services. Epiq shall not be liable for, and Client accepts full responsibility for, any liability or obligation with respect to Client Data prior to Epiq's receipt, including without limitation, any liability arising during the delivery of Client Data to Epiq.
- 6.2 Any Client Data, programs, storage media or other materials furnished by Client to Epiq in connection with this Agreement (collectively, the "Client Materials") may be retained by Epiq until the services provided pursuant to this Agreement are paid for in full, or until this Agreement is terminated with the services provided herein having been paid for in full. Client shall remain liable for all out of pocket charges incurred by Epiq under this Agreement as a result of any Client Materials maintained by Epiq. Epiq shall dispose of Client Materials in the manner requested by Client (except to the extent disposal may be prohibited by law). Client agrees to pay Epiq for reasonable expenses incurred as a result of the disposition of Client Materials. Epiq reserves the right to dispose of any Client Materials if this Agreement is terminated without Client's direction as to the return or disposal of Client Materials or Client has not paid all charges due to Epiq for a period of at least ninety (90) days; provided, however, Epiq shall provide Client with thirty (30) days' prior written notice of its intent to dispose of such data and media.

## **7. Indemnification.**



Client shall indemnify, defend and hold Epiq, its affiliates, parent, and each such entity's officers, members, directors, agents, representatives, managers, consultants and employees (each an "Indemnified Person") harmless from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' fees) and expenses as incurred (collectively, "Losses"), to which any Indemnified Person may become subject or involved in any capacity arising out of or relating to this Agreement or Epiq's rendering of services pursuant hereto, regardless of whether any of such Indemnified Persons is a party thereto, other than Losses resulting solely from Epiq's gross negligence or willful misconduct. Without limiting the generality of the foregoing, "Losses" includes any liabilities resulting from claims by third persons against any Indemnified Person. Client and Epiq shall notify the other party in writing promptly of the commencement, institution, threat, or assertion of any claim, action or proceeding of which Client is aware with respect to the services provided by Epiq under this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of Client, and shall survive the termination of this Agreement until the expiration of all applicable statutes of limitation with respect to Epiq's liabilities.

#### **8. Representations / Warranties.**

Epiq makes no representations or warranties, express or implied, including, without limitation, any implied or express warranty of merchantability, suitability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

#### **9. Confidential On-Line Workspace**

Upon request of Client, Epiq shall be authorized to: (a) establish a confidential on-line workspace with an outside vendor in connection with the provision of its services to Client pursuant to this Agreement; and (b) with the consent of Client and/or its designees, publish documents and other information to such confidential workspace. By publishing documents and other information to this confidential workspace in accordance with the foregoing, Epiq shall not be considered in violation of any of the provisions of this Agreement, including, but not limited to, Section 4 (Confidentiality).

#### **10. General**

- 10.1 No waiver, alteration, amendment or modification of any of the provisions of this Agreement shall be binding upon either party unless signed in writing by a duly authorized representative of both parties.
- 10.2 This Agreement may not be assigned by Client without the express written consent of Epiq, which consent shall not be unreasonably withheld. The services provided under this Agreement are for the sole benefit and use of Client, and shall not be made available to any other persons.
- 10.3 This Agreement shall be governed by the laws of the State of New York, without regard to that state's provisions for choice of law. Client and Epiq agree that any controversy or claim arising out of or relating to this Agreement or the alleged breach thereof shall be settled by mandatory,



final and binding arbitration before the American Arbitration Association in New York, New York and such arbitration shall comply with and be governed by the rules of the American Arbitration Association, provided that each party may seek interim relief in court as it deems necessary to protect its confidential information and intellectual property rights. Any arbitration award rendered pursuant to this provision shall be enforceable worldwide.

- 10.4 The parties hereto agree that this Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.
- 10.5 Client will use its best efforts to cooperate with Epiq at Client's facilities if any portion of the Services requires its physical presence thereon.
- 10.6 In no event shall Epiq's Services constitute or contain legal advice or opinion, and neither Epiq nor its personnel shall be deemed to practice law hereunder.
- 10.7 Except for Client's obligation to pay fees, expenses and charges hereunder when due, neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement to the extent such delay or failure arises by reason of any act of God, any governmental requirement, act of terrorism, riots, epidemics, flood, strike, lock-out, industrial or transportational disturbance, fire, lack of materials, war, event of force majeure, or other acts beyond the reasonable control of a performing party.
- 10.8 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.
- 10.9 All clauses and covenants in this Agreement are severable; in the event any or part of them are held invalid or unenforceable by any court, such clauses or covenants shall be valid and enforced to the fullest extent available, and this Agreement will be interpreted as if such invalid or unenforceable clauses or covenants were not contained herein. The parties are independent contractors and, except as expressly stated herein, neither party shall have any rights, power or authority to act or create an obligation on behalf of the other party.



10.10 Notices to be given or submitted by either party to the other, pursuant to this Agreement, shall be sufficiently given or made if given or made in writing and sent by hand delivery, overnight or certified mail, postage prepaid, and addressed as follows:

If to Epiq Systems:

Epiq Bankruptcy Solutions, LLC  
777 Third Avenue, 12th Floor  
New York, New York 10017  
Attn: Brad Scott

If to Client:

Xtera Communications Inc.  
500 West Bethany Drive, Suite 100  
Allen, TX 75013  
Attn: Joseph Chinnici

With a copy to:

DLA Piper LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020  
Attn: Thomas Califano

10.11 Invoices sent to Client should be delivered to the following address:

Xtera Communications Inc.  
500 West Bethany Drive, Suite 100  
Allen, TX 75013  
Attn: Joseph Chinnici

Email: \_\_\_\_\_

10.12 The "Effective Date" of this Agreement is November 14, 2016.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**EPIQ BANKRUPTCY SOLUTIONS, LLC**

A handwritten signature in blue ink, appearing to read "Brad Scott".

\_\_\_\_\_  
Name: Brad Scott  
Title: President & COO

**CLIENT**

By: Joseph R Chance 11/15/16  
Name:  
Title: CFO



## **SERVICES SCHEDULE**

### **SCHEDULES/STATEMENT PREPARATION**

- Assist the Debtors with administrative tasks in the preparation of their bankruptcy Schedules of Assets and Liabilities (“Schedules”) and Statements of Financial Affairs (“Statements”), including (as needed):
  - Coordinate with the Client and its advisors regarding the Schedules and Statements process, requirements, timelines and deliverables.
  - Create and maintain databases for maintenance and formatting of Schedules and Statements data.
  - Coordinate collection of data from Client and advisors.
  - Provide data entry and quality assurance assistance regarding Schedules and Statements, including, specifically, the creation of Schedule G.

### **CLAIMS MANAGEMENT**

- Maintain copies of all proofs of claim and proofs of interest filed (in hard copy and electronic form).
- Provide a secure on-line tool through which creditors can file proofs of claim and related documentation, eliminating costly manual intake, processing and data entry of paper claims and ensuring maximum efficiency in the claim-filing process.
- Create and maintain electronic databases for creditor/party in interest information provided by the debtor (e.g., creditor matrix and Schedules of Statements of Assets and Liabilities) and creditors/parties in interest (e.g., proof of claim/interests).
- Process all proof of claim/interest submitted.
- Provide access to the public for examination of copies of the proofs of claim or interest without charge during regular business hours.
- Maintain official claims registers, including, among other things, the following information for each proof of claim or proof of interest:
  - Name and address of the claimant and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
  - Date received;
  - Claim number assigned; and
  - Asserted amount and classification of the claim.



- Create and maintain a website with general case information, key documents, claim search function, and mirror of ECF case docket.
- Transmit to the Clerk's office a copy of the claims registers on a monthly basis, unless requested by the Clerk's office on a more or less frequent basis or, in the alternative, make available the claims register on-line.
- Implement necessary security measures to ensure the completeness and integrity of the claims registers.
- Record all transfers of claims pursuant to Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Bankruptcy Rule 3001(e).
- Maintain an up-to-date mailing list for all entities that have filed a proof of claim, proof of interest or notice of appearance, which list shall be available upon request of a party in interest or the Clerk's office.

### **NOTICING**

- Prepare and serve required notices in these Chapter 11 cases, including:
  - Notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code;
  - Notice of any auction sale hearing;
  - Notice of the claims bar date;
  - Notice of objection to claims;
  - Notice of any hearings on a disclosure statement and confirmation of the plan of reorganization; and
  - Other miscellaneous notices to any entities, as the debtor or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases.
- After service of a particular notice - whether by regular mail, overnight or hand delivery, email or facsimile service - file with the Clerk's office an affidavit of service that includes a copy of the notice involved, a list of persons to whom the notice was mailed and the date and manner of mailing.
- Update claim database to reflect undeliverable or changed addresses.





- Coordinate publication of certain notices in periodicals and other media.
- Distribute Claim Acknowledgement Cards to creditor having filed a proof of claim/interest.

### **CRISIS AND COMMUNICATION MANAGEMENT**

- Draft crisis and restructuring communications plan and provide strategy, guidance and plan implementation support.
  - Media Strategy – Work with and advise Client on a media strategy that supplements existing media processes and procedures.
  - Customer, Vendor and other Constituent Outreach – Create outreach strategy and develop supporting documents. Keeping this group informed every step of the way through open and honest outreach will support loyalty, engender trust, and ensure that ongoing operations continue.
  - Employee Communications – Construct and support Client strategize and draft employee communications. Leverage employee relationships by keeping employees in the loop which will help maintain productivity and engender trust. In other words, the more they know, the less they will assume.
  - Document Development – The communications team, in collaboration with Client and its legal, financial, and other advisors, will prepare all necessary documents such as letters, Q&A, talking points, etc. for use with media, employees, customers, vendors and other critical constituents. If Client files for Chapter 11, the news release will also parallel the legal pleading and act as the central document from which all others will be developed. The communications team will draft each of the documents and circulate them through management and the legal team for review and comments.
  - Dissemination of communication materials – Client and/or the communications team will distribute communications documents/emails/etc. to all constituencies to ensure timely information flow to its employees, customers, vendors, and the like.
  - Draft Ongoing Messages – The communications team will draft updated employee memos and follow-up letters to customers, vendors, etc., as Client moves through the restructuring process. Keeping constituents informed is critical to ensure that business operations are productive during the restructuring.

### **BALLOTING/TABULATION**



- Provide balloting services in connection with the solicitation process for any chapter 11 plan for which a disclosure statement has been approved by the court, including (as needed):
  - Consult with Client and its counsel regarding timing issues, voting and tabulation procedures, and documents needed for the vote.
  - Review of voting-related sections of the voting procedures motion, disclosure statement and ballots for procedural and timing issues.
  - Assist in obtaining information regarding members of voting classes, including lists of holders of bonds from DTC and other entities (and, if needed, assist Client in requesting these listings).
  - Coordinate distribution of solicitation documents.
  - Respond to requests for documents from parties in interest, including brokerage firm and bank back-offices and institutional holders.
  - Respond to telephone inquiries from lenders, bondholders and nominees regarding the disclosure statement and the voting procedures.
  - Receive and examine all ballots and master ballots cast by voting parties. Date- stamp the originals of all such ballots and master ballots upon receipt.
  - Tabulate all ballots and master ballots received prior to the voting deadline in accordance with established procedures, and prepare a certification for filing with the court.

Undertake such other duties as may be requested by the Client.

### **CALL CENTER**

- Provide state-of-the-art Call Center facility and services, including (as needed):
  - Create frequently asked questions, call scripts, escalation procedures and call log formats.
  - Record automated messaging.
  - Train Call Center staff.
  - Maintain and transmit call log to Client and advisors.

### **MISCELLANEOUS**



- Provide such other claims processing, noticing and related administrative services as may be requested from time to time by the Client.
- Promptly comply with such further conditions and requirements as the Court may at any time prescribe.
- Comply with applicable federal, state, municipal, and local statutes, ordinances, rules, regulations, orders and other requirements.
- Provide temporary employees to the Clerk's Office to process claims, as necessary.



## **EPIQ SYSTEMS PRICING SCHEDULE**

### **CLAIM ADMINISTRATION HOURLY RATES**

<b><u>Title</u></b>	<b><u>Rates</u></b>
Clerical/Administrative Support	\$25.00 – \$45.00
IT / Programming	\$65.00 – \$85.00
Case Managers	\$70.00 – \$165.00
Consultants/ Directors/Vice Presidents	\$160.00 – \$190.00
Solicitation Consultant	\$190.00
Executive Vice President, Solicitation	\$215.00
Executives	No Charge

### **CLAIMS AND NOTICING RATES<sup>1</sup>**

Printing	\$0.09 per image
Personalization / Labels	WAIVED
Envelopes	VARIES BY SIZE
Postage / Overnight Delivery	AT COST AT PREFERRED RATES
E-Mail Noticing	WAIVED
Fax Noticing	0.05 per page
Claim Acknowledgement Letter	0.05 per letter
Publication Noticing	Quoted at time of request

### **DATA MANAGEMENT RATES**

Data Storage, Maintenance and Security	\$0.09 per record/month
Electronic Imaging	0.05 per image; no monthly storage charge
Website Hosting Fee	NO CHARGE
CD- ROM (Mass Document Storage)	Quoted at time of request

### **ON-LINE CLAIM FILING SERVICES**

On-Line Claim Filing	NO CHARGE
----------------------	-----------

<sup>1</sup> Noticing via overnight delivery after traditional overnight drop-off times (e.g., 9:00 p.m. in NYC) may result in additional print charges.



**CALL CENTER RATES**

Standard Call Center Setup	NO CHARGE
Call Center Operator	\$55 per hour
Voice Recorded Message	\$0.34 per minute

**OTHER SERVICES RATES**

Custom Software, Workflow and Review Resources	Quoted at time of request
eDiscovery	Quoted at time of request, bundling pricing available
Virtual Data Room -- Confidential On-Line Workspace	Quoted at time of request
Disbursements -- Check and/or Form 1099	Quoted at time of request
Disbursements -- Record to Transfer Agent	Quoted at time of request

**EXHIBIT B**

**Karpuk Declaration**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

XTERA COMMUNICATIONS, INC., *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 16-12577

Related D.I.:

**DECLARATION OF BRIAN KARPUK IN SUPPORT OF  
DEBTORS' APPLICATION FOR ENTRY OF AN ORDER PURSUANT TO  
28 U.S.C. § 156(C) APPROVING THE RETENTION AND APPOINTMENT OF EPIQ  
BANKRUPTCY SOLUTIONS, LLC AS THE CLAIMS AND NOTICING AGENT TO  
THE DEBTORS, EFFECTIVE *NUNC PRO TUNC* TO THE COMMENCEMENT DATE**

I, Brian Karpuk, being duly sworn, state the following under penalty of perjury and that the following is true to the best of my knowledge, information and belief:

1. I am a Director with Epiq Bankruptcy Solutions, LLC ("**Epiq**"), with offices located at 824 N. Market Street, Suite 412, Wilmington, Delaware 19801.

2. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

3. I am authorized to submit this declaration (the "**Declaration**") in support of the *Debtors' Application for Entry of an Order Pursuant to 28 U.S.C. § 156(c) Approving the Retention and Appointment of Epiq Bankruptcy Solutions, LLC as the Claims and Noticing Agent*

---

<sup>1</sup> 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.

to the Debtors, *Effective Nunc Pro Tunc to the Commencement Date* (the “**Application**”)<sup>2</sup> by the above referenced debtors and debtors in possession (the “**Debtors**”).

4. As agent and custodian of the Court records pursuant to 28 U.S.C. § 156(c), Epiq will perform at the request of the Clerk the noticing and claims services specified in the Application and Services Agreement. In addition, at the Debtors’ request, Epiq will perform such other claims and noticing services specified in the Application. For the avoidance of doubt, pursuant to the Services Agreement, Epiq will perform the Claims and Noticing Services for Xtera and its debtor affiliates, as debtors and debtors in possession in these chapter 11 cases.

5. Epiq is one of the country’s leading chapter 11 administrators, with experience in noticing, claims administration, and facilitating other administrative aspects of Chapter 11 cases. Epiq has substantial experience in cases of this size and complexity, and has acted as the official claims and noticing agent in many large bankruptcy cases including the following cases in this District: *In re Dex Media, Inc.*, Case No. 16-11200 (KG) (Bank. D. Del. May 15, 2016); *In re Fresh & Easy, LLC*, Case No. 15-12220 (BLS) (Bank. D. Del. October 30, 2015); *In re Allen Systems Group, Inc.*, Case No. 15-10332 (KJC) (Bankr. D. Del. Feb. 18, 2015); *In re Deb Stores Holding, LLC*, Case No. 14-12676 (KG) (Bankr. D. Del. Dec. 4, 2014); *In re AWI Delaware, Inc.*, Case No. 14-12092 (KJC) (Bankr. D. Del. Sept. 9, 2014); *In re Natrol, Inc.*, Case No. 14-11446 (BLS) (Bankr. D. Del. June 11, 2014); *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del. May 2, 2014); *In re F & H Acquisition Corp.*, Case No. 13-13220 (KG) (Bankr. D. Del. Dec. 17, 2013); *In re TPO Hess Holdings, Inc.*, Case No. 13-11327 (KJC) (Bankr. D. Del. May 23, 2013); *In re The SCOOTER Store Holdings, Inc.*, Case No. 13-10904 (PJW) (Bankr. D. Del. April 15, 2013); *In re Dex One Corp.*, Case No. 13-10533(KG) (Bankr. D. Del. Apr. 10, 2013); *In re SuperMedia Inc.*, Case No. 13-10545 (KG) (Bankr. D. Del. Apr.

---

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.



10, 2013); *In re Rotech Healthcare Inc.*, Case No. 13-10741 (PJW) (Bankr. D. Del, April 8, 2013); *In re Namco LLC*, Case No. 13-10610 (PJW) (Bankr. D. Del. March 27, 2013).

6. Epiq represents, among other things, the following:
  - (a) Epiq neither holds nor represents any interest adverse to the Debtors' estates in connection with any matters for which Epiq will be employed;
  - (b) I am not related or connected to and, to the best of my knowledge, no other professional of Epiq is related to or connected to any United States Bankruptcy Judge for the District of Delaware or the United States Trustee or to any employee in the offices thereof;
  - (c) Epiq will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
  - (d) by accepting employment in these chapter 11 cases, Epiq waives any rights to receive compensation from the United States government;
  - (e) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Epiq will not be an agent of the United States and will not act on behalf of the United States;
  - (f) Epiq will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
  - (g) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Epiq will not intentionally misrepresent any fact to any person;
  - (h) Epiq shall be under the supervision and control of the Clerk's office with respect to the receipt and recordation of claims and claim transfers; and
  - (i) none of the services provided by Epiq as the Claims and Noticing Agent shall be at the expense of the Clerk's office.

7. In connection with the preparation of this Declaration, I caused to be submitted for review by our conflicts system the names of all known potential parties in interest (the "**Parties-in-Interest**") in these cases. The list of Parties-in-Interest was provided by the Debtors and included the Debtors, the Debtors' current and former directors and officers, significant stockholders, secured creditors, top 20 unsecured creditors, and other parties. The results of the

conflicts check were compiled and reviewed by employees of Epiq, under my supervision. At this time, Epiq is not aware of any relationship which would present a disqualifying conflict of interest.

8. Epiq currently serves, or in the past may have served, in a neutral capacity as claims, noticing, balloting and/or solicitation agent for certain of these parties or related parties. However, given Epiq's neutral position as claims and noticing agent or administrative advisor in the listed parties' cases, or any other cases, Epiq does not view such relationships as real or potential conflicts. Further, to the best of my knowledge any such relationship is completely unrelated to these chapter 11 cases. Accordingly, to the best of my knowledge, Epiq and each of its employees are "disinterested persons," as that term is defined in Bankruptcy Code section 101(14), and neither Epiq nor any of its employees hold or represent an interest adverse to the Debtors' estates related to any matter for which Epiq will be employed.

9. To the best of my knowledge, neither Epiq nor any of its personnel have any relationship with the Debtors that would impair Epiq's ability to serve as Claims and Noticing Agent. Epiq may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which Epiq serves or has served in a neutral capacity as claims and noticing agent for another chapter 11 debtor. To the best of my knowledge, such relationships are completely unrelated to these chapter 11 cases. Epiq's personnel may have relationships with some of the Debtors' creditors or other parties in interest. To the best of my knowledge, however, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to these chapter 11 cases. Epiq has, and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, Epiq has had, and will continue to have, relationships in the ordinary course of its business with certain vendors, professionals, and

other parties in interest that may be involved in the Debtors' cases in matters unrelated to these cases.

10. Epiq shares a corporate parent with certain companies that provide integrated technology products and services to the legal profession for electronic discovery, class action settlements, financial transactions, chapter 7 and 13 bankruptcy, litigation, and regulatory compliance. Given the legal and operational separateness of Epiq from its affiliates and the administrative nature of the services performed by such companies, Epiq does not believe that a conflict would arise solely from any relationship or claim of an Epiq affiliate or its corporate parent.

11. If any new facts or relationships are discovered, Epiq will supplement its disclosure to the Court.

12. In performing the services of the Claims and Noticing Agent, Epiq will charge the Debtors the rates set forth in the Services Agreement.

13. Prior to the Commencement Date, the Debtors provided Epiq a retainer in the amount of \$3,000. Epiq agrees to use the retainer per the terms of the Services Agreement.

14. Epiq will comply with all requests of the Clerk's office, including the Claims Agent Protocol and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

15. The services provided by Epiq will be administrative in nature, and Epiq will not provide services in the nature of legal representation and/or advice to the Debtors.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: November 15, 2016

/s/ *Brian Karpuk*  
Name: Brian Karpuk  
Title: Director  
Epiq Bankruptcy Solutions, LLC