

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **2016-09-07** | Period of Report: **2016-08-31**  
SEC Accession No. [0001564590-16-024993](#)

([HTML Version](#) on [secdatabase.com](#))

FILER

**XTERA COMMUNICATIONS, INC.**

CIK: **1122051** | IRS No.: **383394611** | State of Incorporation: **DE**  
Type: **8-K** | Act: **34** | File No.: **001-37617** | Film No.: **161873824**  
SIC: **3661** Telephone & telegraph apparatus

Mailing Address

500 WEST BETHANY DRIVE  
SUITE 100  
ALLEN TX 75013

Business Address

500 WEST BETHANY DRIVE  
SUITE 100  
ALLEN TX 75013  
972-649-5000

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): August 31, 2016**

**XTERA COMMUNICATIONS, INC.**

(Exact name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-37617**  
(Commission File Number)

**38-3394611**  
(IRS Employer  
Identification No.)

**500 West Bethany Drive, Suite 100**  
**Allen, Texas**  
(Address of Principal Executive Offices)

**75013**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (972) 649-5000**

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

## Item 1.01 Entry into a Material Definitive Agreement.

### *Pacific Western Bank*

Xtera Communications, Inc. (the “**Company**”) and its subsidiaries party to the Credit Agreement (as defined below), Azea Networks, Inc., Neovus, Inc. and Xtera Asia Holdings, LLC (collectively, the “**Borrowers**”), entered into a Limited Waiver and Seventh Amendment to Loan Agreement (the “**PWB Amendment**”), dated August 31, 2016, by and among the Borrowers and Pacific Western Bank (as successor in interest by merger to Square 1 Bank) which amends the Loan and Security Agreement (as amended, the “**Credit Agreement**”) dated January 16, 2015.

The PWB Amendment, among other things:

- waives an event of default by the Company;
- provides that Pacific Western Bank shall not make any further loans to the Borrowers;
- allocates the application and payment of proceeds received after the date of the PWB Amendment;
- modifies the date by which the Company must deliver documentation relating to a fundraising alternative;
- requires Borrowers to deliver a budget setting forth certain expenses;
- modifies the definition of “Permitted Indebtedness” to allow indebtedness in an aggregate amount of \$1,500,000; and
- modifies the maturity date of the Credit Agreement to October 1, 2016.

Except as modified by the PWB Amendment, the remaining terms of the Credit Agreement remain in full force and effect. The PWB Amendment is filed as Exhibit 10.1 to this current report on Form 8-K and is incorporated herein by reference. The foregoing description of the PWB Amendment is a summary and is qualified in its entirety by the terms of the PWB Amendment.

### *Horizon*

The Company also entered into a Limited Waiver and Eleventh Amendment to Venture Loan and Security Agreement (the “**Horizon Amendment**”), dated August 31, 2016, by and between the Company and Horizon Technology Finance Corporation (as amended, the “**Loan Agreement**”), dated May 10, 2011. The Horizon Amendment, among other things:

- waives any cross-default under the Loan Agreement;
- modifies the date by which the Company must deliver documentation relating to a fundraising alternative;
- modifies the definition of “Permitted Indebtedness” to allow indebtedness in an aggregate amount of \$1,500,000; and
- modifies the maturity date of the Loan Agreement and related promissory notes thereunder to October 1, 2016.

Except as modified by the Horizon Amendment, the remaining terms of the Loan Agreement remain in full force and effect. The Horizon Amendment is filed as Exhibit 10.2 to this current report on Form 8-K and is incorporated herein by reference. The foregoing description of the Horizon Amendment is a summary and is qualified in its entirety by the terms of the Horizon Amendment.

The Company continues to pursue a variety of strategic initiatives to address its liquidity needs, including the sale of all or a portion of its business, certain financing activities as well as restructuring alternatives. There can be no assurance that the Company will successfully be able to resolve its current liquidity situation.

**Item 9.01. Financial Statements and Exhibits**

(d) The following exhibits are filed herewith:

**Exhibit 10.1** Limited Waiver and Seventh Amendment to Loan Agreement dated August 31, 2016 by and among Pacific Western Bank, the Company, Azea Networks, Inc., Neovus, Inc. and Xtera Asia Holdings, LLC.

**Exhibit 10.2** Limited Waiver and Eleventh Amendment of Venture Loan and Security Agreement, dated August 31, 2016, by and between the Company and Horizon Technology Finance Corporation.

---

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**XTERA COMMUNICATIONS, INC.**

Date: September 7, 2016

By: \_\_\_\_\_ /s/ Joseph R. Chinnici  
**Joseph R. Chinnici**  
**Chief Financial Officer and Secretary**

# Limited Waiver and Seventh Amendment to Loan Agreement

**Borrowers:**

**Xtera Communications, Inc.**  
**Azea Networks, Inc.**  
**Neovus, Inc.**  
**Xtera Asia Holdings, LLC**

**Date:** August 31, 2016

This **Limited Waiver and Seventh Amendment to Loan Agreement** (this “Amendment”) is entered into between Pacific Western Bank (“Lender”) and, jointly and severally, the borrowers named above (collectively referred to herein as “Borrower”).

The parties hereto agree to amend the Loan and Security Agreement between Borrower and Lender (as successor in interest by merger to Square 1 Bank), dated January 16, 2015 (as amended, restated, supplemented, or otherwise modified from time to time, the “Loan Agreement”), and Lender agrees to waive an Event of Default thereunder, as follows, effective as of the date hereof, unless otherwise indicated below, subject to the terms and conditions set forth below. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

**Limited Waiver.** Borrower acknowledges and agrees that (i) as of September 2, 2016, Borrower had total Loans and other Obligations outstanding in excess of the Credit Limit and (ii) such occurrence constitutes an Event of Default under Section 7.1(c) of the Loan Agreement (the “Specified Default”).

Lender hereby waives the Specified Default, but not Borrower’s obligation to repay Overadvances including any now-existing Overadvances. Such waiver does not constitute any of the following: (i) a waiver of any other term or provision of any of the Loan Documents; or (ii) an agreement to waive in the future any term or provision of any of the Loan Documents.

**1. No Further Loans.** Notwithstanding any term or provision of the Loan Agreement, Borrower shall not request from Lender, and Lender shall not make to Borrower, any further Loans or other credit accommodations pursuant to the Loan Agreement or otherwise.

**2. Application/Payment of Proceeds of Accounts.** Proceeds of any Account received after the date hereof shall be applied or paid as follows:

- (a) FIRST, applied to the payment of Loans, in an amount equal to the product of: (i) the Applicable Advance Rate for such Account, multiplied by (ii) the total proceeds of such Account received;
- (b) THEN, after giving effect to the payment set forth in the immediately preceding subsection (a), applied to the payment of any outstanding Overadvances;
- (c) THEN, any amount(s) remaining after the applications set forth in the immediately preceding subsections (a) and (b) shall be paid to Borrower.

For the purposes of the calculation set forth above in Section 2(a), “Applicable Advance Rate” means, with respect to any Account: (i) if the Account was an Eligible Account at the time of its creation, the Advance Rate then applicable to such Account pursuant to Section 1(b) of the Schedule, i.e., either 75% or 85%; and (ii) if the Account was not an Eligible Account at the time of its creation, 85%.

**3. Extension of Maturity Date.** Section 4 of the Schedule, which currently reads as follows:

“**4. MATURITY DATE**  
(Section 6.1) September 1, 2016.”

is hereby amended in its entirety to read:

“**4. MATURITY DATE**  
(Section 6.1) October 1, 2016.”

**4. Modification of Financial Covenant.** In Section 5 of the Schedule, the subsection entitled “Cash Infusion to Parent” is hereby amended in its entirety to read:

“Cash Infusion  
to Parent: On or before the Commitment Document Deadline,  
Borrower shall provide Lender with a copy of a  
Commitment Document.

For the purposes of this Agreement: (A) ‘Commitment Document Deadline’ means the date that is 3 Business Days after the date Lender has transmitted to Borrower, by email which shall be deemed received by Borrower when transmitted by Lender, a request for a copy of an executed Commitment Document; and (B) ‘Commitment Document’ means a term sheet or letter of intent or other similar document, acceptable to Lender executed by Person(s)

acceptable to Lender, evidencing the commitment of such Person(s) to enter into one of the following transactions, upon terms and conditions acceptable to Lender:

- (i) the issuance to such Person(s) of equity and/or debt securities of Parent, in connection with which Borrower is required, under the terms of the Commitment Document, to pay all of the Obligations in full;
- (ii) a transaction other than that set forth in subsection (i) above pursuant to which Borrower shall receive cash, in such amount and upon such terms and conditions as are satisfactory to Lender in its sole discretion; or
- (iii) a Sale of Parent to such Person(s).

An Event of Default shall be deemed to have occurred if: (1) Lender has not received, on or before the Commitment Document Deadline, a Commitment Document; or (2) any Commitment Document is revoked or in any other manner deemed invalid or ineffective by any party thereto.”

**5. Borrower to Provide Budget.** The following subsection (p) is hereby added to the end of Section 6 of the Schedule:

- “(p) on or before September 12, 2016, a budget (the ‘September 2016 Budget’) acceptable to Lender, setting forth up to \$500,000 of Borrower’s Necessary Non-Payroll Expenses. For the purposes of this Agreement: (i) ‘Necessary Non-Payroll Expenses’ means and includes only those expenses of Borrower which (A) do not include Payroll Expenses, and (B) Borrower represents and warrants are necessary for the operation of Borrower’s business during the period of September 16 through September 30, 2016; (ii) ‘Payroll Expenses’ means and includes only the following: salaries, wages, payroll taxes and unemployment



compensation insurance; (iii) 'Budgeted Non-Payroll Expenses' means and includes Necessary Non-Payroll Expenses which are set forth in the September 2016 Budget; and (iv) 'Non-Budgeted Non-Payroll Expenses' means and includes Necessary Non-Payroll Expenses which are not set forth in the September 2016 Budget."

**6. New Lender Indebtedness Constitutes Permitted Indebtedness.** In Section 8 of the Loan Agreement, that portion of the definition of "Permitted Indebtedness" which currently reads:

"(x) Other unsecured Indebtedness in an aggregate principal amount not to exceed \$100,000 at any one time outstanding; and

(xi) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness in clauses (ii) through (xi) above, provided that the principal amount thereof is not increased and the terms thereof are not modified to impose more burdensome terms upon Borrower, and provided, in the case of Subordinated Debt, that it continues to be Subordinated Debt."

is hereby amended to read:

"(x) Other unsecured Indebtedness in an aggregate principal amount not to exceed \$100,000 at any one time outstanding;

(xi) Indebtedness arising on or after September 1, 2016, to a group of Persons (the 'New Lenders') in an aggregate principal amount not to exceed \$1,500,000 (the 'New Lender Indebtedness'), provided that prior to Borrower incurring any New Lender Indebtedness, Lender and the New Lenders shall have entered into a Subordination Agreement, acknowledged and agreed to by Borrower, containing terms and conditions acceptable to Lender; and

(xii) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness in clauses (ii) through (x) above, provided that the principal amount thereof is not increased and the terms thereof are not modified to impose more burdensome terms upon Borrower, and provided, in the case of Subordinated Debt, that it continues to be Subordinated Debt."

**7. Fee. [Intentionally omitted.]**

**8. Representations True.** Borrower represents and warrants to Lender that all representations and warranties set forth in the Loan Agreement, as amended hereby, are true and correct as if made on the date hereof.

**9. No Waiver.** Nothing herein constitutes a waiver of any default or Event of Default under the Loan Agreement or any other Loan Documents, whether or not known to Lender.

**10. General Release.** In consideration for Lender entering into this Amendment, Borrower hereby irrevocably releases and forever discharges Lender, and its successors, assigns, agents, shareholders, directors, officers, employees, agents, attorneys, parent corporations, subsidiary corporations, affiliated corporations, affiliates, participants, and each of them, from any and all claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes of action, of every nature and description, known and unknown, which Borrower now has or at any time may hold, by reason of any matter, cause or thing occurred, done, omitted or suffered to be done prior to the date of this Amendment (collectively, the “Released Claims”). Borrower hereby irrevocably waives the benefits of any and all statutes and rules of law to the extent the same provide in substance that a general release does not extend to claims which the creditor does not know or suspect to exist in its favor at the time of executing the release. Borrower represents and warrants that it has not assigned to any other Person any Released Claim, and agrees to indemnify Lender against any and all actions, demands, obligations, causes of action, decrees, awards, claims, liabilities, losses and costs, including but not limited to reasonable attorneys' fees of counsel of Lender’s choice and costs, which Lender may sustain or incur as a result of a breach or purported breach of the foregoing representation and warranty.

**11. General Provisions.** Borrower hereby ratifies and confirms the continuing validity, enforceability and effectiveness of the Loan Agreement and all other Loan Documents. This Amendment, the Loan Agreement, any prior written amendments to the Loan Agreement signed by Lender and Borrower, and all other written documents and agreements between Lender and Borrower, set forth in full all of the representations and agreements of the parties with respect to the subject matter hereof and supersede all prior discussions, representations, agreements and understandings between the parties with respect to the subject hereof. Except as herein expressly amended, all of the terms and provisions of the Loan Agreement, and all other documents and agreements between Lender and Borrower shall continue in full force and effect and the same are hereby ratified and confirmed. Without limiting the generality of the foregoing, the provisions of all subsections of Section 9 of the Loan Agreement (titled “General Provisions”), including without limitation all provisions relating to governing law, venue, jurisdiction, dispute resolution, and *the waiver of the right to a jury trial*, shall apply equally to this Amendment, and the same are incorporated herein by this reference.

*[Signatures on Following Page]*

**Pacific Western Bank Limited Waiver and Seventh Amendment to Loan Agreement**

Borrower:

Xtera Communications, Inc.

By: /s/ Joseph R. Chinnici

Title: Chief Financial Officer

Borrower:

Azea Networks, Inc.

By: /s/ Joseph R. Chinnici

Title: Chief Financial Officer

Borrower:

Neovus, Inc.

By: /s/ Joseph R. Chinnici

Title: Chief Financial Officer

Borrower:

Xtera Asia Holdings, LLC

By: /s/ Joseph R. Chinnici

Title: Chief Financial Officer

Lender:

Pacific Western Bank

By: /s/ Victor DeMarco

Title: SVP

*[Signature Page – Limited Waiver and Seventh Amendment to Loan Agreement]*

**CONSENT**

The undersigned expressly acknowledges and agrees that: (i) the undersigned's consent to the foregoing Limited Waiver and Seventh Amendment to Loan Agreement (the "Amendment") is not required, but the undersigned nevertheless does hereby consent to the Amendment and the execution of the New Lender Subordination Agreement; (ii) all Indebtedness due and owing from Borrower to the undersigned is subordinated to the New Lender Indebtedness upon the same terms and conditions set forth in the Amendment and the New Lender Subordination Agreement with respect to the respective priorities of the Obligations and the New Lender Indebtedness; (iii) the subordination by Lender of the Obligations to the New Lender Indebtedness as set forth in the Amendment and the New Lender Subordination Agreement does not in any way limit or decrease any recovery by Lender of the Obligations; i.e., the Obligations shall not be reduced by reason of any payments on account of the New Lender Indebtedness permitted under the New Lender Subordination Agreement. Capitalized terms used but not defined in this Consent shall have the meanings given to them in the Loan Agreement, as defined in the Amendment. Nothing herein shall in any way limit any of the terms or provisions of any subordination agreement or other instrument, agreement or document executed by the undersigned in favor of Lender, including without limitation that certain Subordination Agreement dated January 16, 2015, entered into by the undersigned and Square 1 Bank (as predecessor-in-interest by merger to Lender), all of which are hereby ratified and reaffirmed.

HORIZON                      TECHNOLOGY                      FINANCE  
CORPORATION

By: \_\_\_\_\_ /s/ Robert D. Pomeroy, Jr.  
**Robert D. Pomeroy, Jr.**  
**Chief Executive Officer**

## LIMITED WAIVER AND ELEVENTH AMENDMENT OF VENTURE LOAN AND SECURITY AGREEMENT

This ELEVENTH AMENDMENT OF VENTURE LOAN AND SECURITY AGREEMENT (this "Agreement"), effective and dated as of August 31, 2016, is entered into by and between Xtera Communications, Inc., a Delaware corporation ("Xtera" or "Borrower") and Horizon Technology Finance Corporation, a Delaware corporation ("Lender").

### RECITALS

A. Xtera and Lender are parties to a certain Venture Loan and Security Agreement dated as of May 10, 2011, as amended from time to time (as amended, the "Loan Agreement") pursuant to which Lender, among other things, has (i) provided certain loans to Xtera as evidenced by (1) a certain Fourth Amended and Restated Secured Promissory Note (Loan A) executed by Xtera in favor of Lender, fourth amended and restated as of May 31, 2016, in the principal amount of Five Million Nine Hundred Eighteen Thousand Three Hundred Seventy-Seven and 53/100 Dollars (\$5,918,377.53) (the "Loan A Note") and (2) a certain Fourth Amended and Restated Secured Promissory Note (Loan B) executed by Xtera in favor of Lender, fourth amended and restated as of May 31, 2016, in the principal amount of One Million Six Hundred Forty-Four Thousand Five Hundred Seventy and 43/100 Dollars (\$1,644,570.43) (the "Loan B Note" and together with the Loan A Note, the "Notes"), and (ii) been granted a security interest in all assets of Xtera, including Intellectual Property (as defined in the Loan Agreement).

B. Xtera has now requested that Lender amend the Loan Agreement to permit Borrower to incur additional Indebtedness, to revise the repayment schedule with respect to the Notes and to waive an Event of Default thereunder.

C. Lender is willing to grant such requests, but only to the extent, and in accordance with the terms, and subject to the conditions, set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Co-Borrowers and Lender hereby agree as follows:

- Definitions; Interpretation. Unless otherwise defined herein, all capitalized terms used herein and defined in the Loan Agreement shall have the respective meanings given to those terms in the Loan Agreement. Other rules of construction set forth in the Loan Agreement, to the extent not inconsistent with this Agreement, apply to this Agreement and are hereby incorporated by reference.
- Limited Waiver. Borrower acknowledges and agrees that (i) Borrower is in default under its Loan and Security Agreement with Pacific Western Bank (the "Specified Default") and (ii) the Specified Default constitutes an Event of Default under Section 8.7 of the Loan Agreement. Subject to the Condition Precedent, Lender hereby agrees to waive the Specified Default. Such waiver does not constitute any of the following: (i) a waiver of any other term

or provision of any of the Loan Documents; or (ii) an agreement to waive in the future any other term or provision of any of the Loan Documents.

3. Amendments to Loan Agreement.

- (a) Borrower and Lender hereby agree that the following definition of “Commitment Document” shall be added to Section 1.1 of the Loan Agreement in its proper alphabetical order:

““Commitment Document” means a term sheet or letter of intent or other similar document, acceptable to Lender, executed by Person(s) acceptable to Lender, evidencing the commitment of such Person(s) to enter into one of the following transactions, upon terms and conditions acceptable to Lender:

(a) the issuance to such Person(s) of Equity Securities and/or debt securities of Borrower, in connection with which Borrower is required, under the terms of the Commitment Document, to repay all of the Obligations in full;

(b) a transaction other than that set forth in subsection (i) above, pursuant to which Borrower shall receive cash, in such amount and upon such terms and conditions as are satisfactory to Lender in its sole discretion; or

(c) a sale of all, or substantially all, of Borrower’s assets or Equity Securities to such Person(s).”

- (b) Borrower and Lender hereby agree that the following definition of “Commitment Document Deadline” shall be added to Section 1.1 of the Loan Agreement in its proper alphabetical order:

““Commitment Document Deadline” means the date that is three (3) Business Days after the date on which Lender has transmitted to Borrower, by email, which shall be deemed received by Borrower when transmitted by Lender, a request for a copy of an executed Commitment Document.”

- (c) Borrower and Lender hereby agree that definition of “Loan A Maturity Date” in Section 1.1 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

““Loan A Maturity Date” means October 1, 2016, or if earlier, the date of acceleration of all Obligations outstanding with respect to Loan A following an Event of Default or the date of prepayment, whichever is applicable.”

- (d) Borrower and Lender hereby agree that definition of “Loan B Maturity Date” in Section 1.1 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

““Loan B Maturity Date” means October 1, 2016, or if earlier, the date of acceleration of all Obligations outstanding with respect to Loan B following an Event of Default or the date of prepayment, whichever is applicable.”

- (e) Borrower and Lender hereby agree that the following language is added as new subsection (f) of the definition of Permitted Indebtedness in Section 1.1 of the Loan Agreement:

“Indebtedness arising on or after September 1, 2016, to a group of Persons (collectively, the “New Lenders”) in an aggregate principal amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000) (the “New Lender Indebtedness”), provided that prior to Borrower incurring any New Lender Indebtedness, Lender and the New Lenders shall have entered into a subordination or similar agreement, acknowledged and agreed to by Borrower, containing terms and conditions acceptable to Lender.”

- (f) Borrower and Lender hereby agree that Section 6.13(b) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“Commitment Document Deadline. Borrower shall, on or prior to the Commitment Document Deadline, provide Lender with the Commitment Document.”

- (g) Borrower and Lender hereby agree that the following language shall be added as new Section 6.14 of the Loan Agreement:

“Delivery of Budget. On or before September 12, 2016, Borrower shall deliver to Lender a budget (the “September 2016 Budget”) acceptable to Lender, setting forth up to \$500,000 of Borrower’s Necessary Non-Payroll Expenses. For the purposes of this Agreement: (i) “Necessary Non-Payroll Expenses” means and includes only those expenses of Borrower which (A) do not include Payroll Expenses, and (B) Borrower represents and warrants are necessary for the operation of Borrower’s business during the period of September 16 through September 30, 2016; (ii) “Payroll Expenses” means and includes only the following: salaries, wages, payroll taxes and unemployment compensation insurance; (iii) “Budgeted Non-Payroll Expenses” means and includes Necessary Non-Payroll Expenses which are set forth in the September 2016 Budget; and (iv) “Non-Budgeted Non-Payroll Expenses” means and includes Necessary Non-Payroll Expenses which are not set forth in the September 2016 Budget.”

4. Amendment to Notes. The Notes are each amended as follows:

- (a) The date “August 1, 2016” appearing in the third (3<sup>rd</sup>) full paragraph on page 3 of each of Notes is deleted and replaced with “September 1, 2016”.
- (b) Each instance of the date “September 1, 2016” appearing in the fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) full paragraphs on page 3 of each of the Notes is deleted and replaced with “October 1, 2016”.

5. Conditions to Effectiveness. Lender's consent and agreement contained herein is expressly conditioned on (i) the Borrower executing and delivering to Lender an executed copy of this Agreement and (ii) the Borrower delivering to Lender a fully executed version of the Limited Waiver and Seventh Amendment to Loan Agreement among Borrower, Azea Networks, Inc., Neovus, Inc., Xtera Asia Holdings, LLC and Pacific Western Bank.
6. Effect of Agreement. On and after the date hereof, each reference to the Loan Agreement in the Loan Agreement or in any other document shall mean the Loan Agreement as amended by this Agreement. Except as expressly provided hereunder, the execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power, or remedy of Lender, nor constitute a waiver of any provision of the Loan Agreement. Except to the limited extent expressly provided herein, nothing contained herein shall, or shall be construed to (nor shall the Borrower ever argue to the contrary) (i) modify the Loan Agreement or any other Loan Document (ii) modify, waive, impair, or affect any of the covenants, agreements, terms, and conditions thereof, or (iii) waive the due keeping, observance and/or performance thereof, each of which is hereby ratified and confirmed by the Borrower. Except as expressly amended herein, the Loan Agreement remains in full force and effect.
7. Headings. Headings in this Agreement are for convenience of reference only and are not part of the substance hereof.
8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut without reference to conflicts of law rules.
9. Counterparts. This Agreement may be executed in any number of counterparts, including by electronic or facsimile transmission, each of which when so delivered shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument.
10. Integration. This Agreement and the Loan Documents constitute and contain the entire agreement of Borrower and Lender with respect to their respective subject matters, and supersede any and all prior agreements, correspondence and communications.

[Remainder of page intentionally blank. Signature page follows]



IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the day and year first above written.

**BORROWER:**

**XTERA COMMUNICATIONS, INC.**

By: \_\_\_\_\_ /s/ Joseph R. Chinnici  
**Joseph R. Chinnici**  
**Chief Executive Officer**

**LENDER:**

**HORIZON TECHNOLOGY FINANCE  
CORPORATION**

By: \_\_\_\_\_ /s/ Robert D. Pomeroy, Jr.  
**Robert D. Pomeroy, Jr.**  
**Chief Executive Officer**