**Court File No.:** CV-13-10274-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 8440522 CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC.**
(collectively, the "Applicants")

# SECOND REPORT OF THE MONITOR

**NOVEMBER 11, 2013**

## INTRODUCTION

1. On September 29, 2013 Data & Audio-Visual Enterprises Holdings Inc. ("**Holdings**") and its wholly owned subsidiaries, Data & Audio-Visual Enterprises Wireless Inc. ("**Wireless**") and 8440522 Canada Inc. (collectively with Wireless and Holdings, the "**Applicants**" or "**Mobilicity**") filed an application before the Court for an Initial Order under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") in order to restructure their business and affairs or complete a sale of their business and assets.

2. On September 30, 2013, this Court made an order (the "**Initial Order**") granting the application and providing for, among other things, the appointment of Ernst & Young Inc. as monitor in the CCAA proceedings of the Applicants (the "**Monitor**") and a stay of proceedings against the creditors of the Applicants until October 30, 2013 or such later date as this Court may order. Pursuant to an order issued on October 24, 2013, the stay of proceedings was extended to December 20, 2013.

## PURPOSE

3. The purpose of this second report (the "**Report**") is to provide information to the Court on:

   (a) discussions with Industry Canada regarding the Proposed Transaction (as defined below);

   (b) The Applicants' proposed sale process (the "**Sale Process**"); and

   (c) The Monitor's recommendation in respect of the Sale Process.

## DISCLAIMER

4. In preparing this Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by Mobilicity, and discussions with management of the Applicants ("**Management**") (collectively, the "**Information**"). Except as described in this Report in respect of the Applicants' cash flow statement:

   (a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("**GAAS**") pursuant to the Canadian Institute of Chartered Accountants Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information; and

   (b) some of the information referred to in this Report consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Canadian Institute of Chartered Accountants Handbook, has not been performed.

## CONTEXT

5. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian dollars.

6. For convenience, capitalized terms not defined in this Report are as defined in the affidavit of Mr. William E. Aziz, President of BlueTree Advisors II Inc., which has been retained by Holdings to provide his services as Chief Restructuring Officer of Mobilicity (the "**CRO**"), sworn on November 7, 2013 (the "**Aziz Affidavit**"), attached (without exhibits) as Appendix "**A**" to this Report.

7. Copies of this Report and other court material filed in connection with these CCAA proceedings may be obtained from the Monitor's website established in connection with these proceedings (www.ey.com/ca/mobilicity) (the "**Monitor's Website**").

## UPDATE ON THE PROPOSED TRANSACTION

8. As described in greater detail in the first report of the Monitor (the "**First Report**") and as further described below, since the issuance of the Initial Order, the Applicants have continued their efforts in furtherance of their proposed acquisition transaction (the "**Proposed Transaction**"). The Proposed Transaction is currently under review by Industry Canada. The Applicants have kept the Monitor abreast of developments with respect to the Proposed Transaction, and the Monitor and its counsel have participated in certain discussions with Industry Canada regarding the Proposed Transaction.

## THE APPLICANTS' PROPOSED SALE PROCESS

9. As described in greater detail in the Aziz Affidavit, Mobilicity has undertaken a review of its circumstances in consultation with the Ad Hoc Committee of Noteholders and the Monitor as well as Mobilicity's financial and legal advisors. This review has resulted in a determination that the best course of action at this time is to commence a formal sale process for the business and assets of the Applicants (referred to below as the "**Assets**").

10. The proposed Sale Process was developed by the Applicants in consultation with their counsel, their financial advisors, counsel to the Ad Hoc Committee of Noteholders and the

Monitor. The proposed Sale Process is intended to maximize stakeholder value through the sale, in one or more transactions, of all or substantially all of the Applicants' business and assets.

11. A copy of the proposed Sale Process is attached hereto as Appendix "**B**".

*Summary of Proposed Sale Process*

12. In the following paragraphs the Monitor will summarize some of the more significant aspects of the proposed Sale Process.

Notification to Potential Purchasers

13. As soon as reasonably practicable after the granting of the Sale Process Order, Mobilicity's financial advisor (the "**Financial Advisor**"), in consultation with the Applicants, the Monitor and the DIP Lenders will prepare an initial offering summary (the "**Teaser Letter**") notifying prospective purchasers of the sale process and will communicate the Teaser Letter to such prospective purchasers.

14. The Monitor understands from discussions with representatives of the Financial Advisor that the Financial Advisor will contact most or all of the strategic and financial parties previously contacted in connection with the potential sale or refinancing of the Applicants, including existing shareholders of the Applicants.

15. Within three (3) days of the granting of the Sale Process Order by the Court, or as soon as practicable thereafter, (i) the Applicants shall publish notice of the Sale Process in *The Globe and Mail* (National Edition), and (ii) the Applicants shall issue a press release regarding the Sale Process through Canada Newswire, designating dissemination in Canada and major financial centers in the United States.

Participation Deadline and Submission of Participation Materials

16. Unless otherwise ordered by the Court or as otherwise determined by the Monitor, in consultation with the Applicants and the DIP Lenders, in order to be a considered for eligibility as a qualified bidder (a "**Qualified Bidder**") each person who wishes to participate in the Sale Process (a "**Potential Bidder**") must deliver all of the following documents (the "**Participation Materials**") to the Monitor, the Financial Advisor, counsel to the Applicants, and counsel to the DIP Lenders (collectively the "**Notice Parties**"):

(a) an executed confidentiality agreement in a form and substance acceptable to the Applicants;

(b) current audited financial statements and latest unaudited financial statements of the Potential Bidder, or such other form of financial disclosure and credit quality support or enhancement that allows the Monitor, in consultation with the Applicants, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate a sale;

(c) confirmation that the Potential Bidder has not engaged and will not engage in any collusion with respect to the bidding or the transactions, in form and substance satisfactory to the Monitor; and

(d) a statement outlining the Potential Bidder's interest in purchasing the assets, or a portion thereof, from the Applicants, including:

i. any assets expected to be excluded;

ii. the structure and financing of the sale;

iii. any anticipated corporate or other approvals required to close the sale; and

iv. any conditions to closing that the Potential Bidder may wish to impose.

17. In the event that the Potential Bidder is an entity formed for the purpose of acquiring the Assets, or any portion thereof, each actual or proposed holder of the equity (whether in the form of stock, partnership interests, LLC interests, debt issued in connection with such person's bid or otherwise) or proposed beneficiary of such person through license or similar

arrangement granted in connection with such person's bid (each, an "**Equity Holder**") must deliver the components of the Participation Materials set out in subparagraphs 16(a), (b) and (c). A single copy of the statement described in subparagraph 16(d) may be provided by the Potential Bidder as a whole.

18. In order for a Potential Bidder to be considered for eligibility as a Qualified Bidder, it must submit the Participation Materials to the Notice Parties prior to December 2, 2013 at 10:00 p.m. (ET) (the "**Participation Deadline**"). The Monitor, after consultation with the Applicants and the DIP Lenders, may extend the Participation Deadline beyond December 2, 2013 at 10:00 p.m. once or successively, but is not obligated to so.

19. The Participation Deadline represents the latest date on which the Participation Materials may be submitted to the Notice Parties. A Potential Bidder may submit its Participation Materials in advance of the Participation Deadline.

Evaluation of Qualified Bidders

20. The Monitor, after consultation with the Applicants and the DIP Lenders, will consider whether a Potential Bidder: (i) has a *bona fide* interest in an acquisition of the Assets; (ii) has delivered all of the Participation Materials prior to the Participation Deadline; and (iii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on such Potential Bidder's financial information. A Potential Bidder that, in the view of the Monitor (in consultation with the Applicants and the DIP Lenders), meets all of the above criteria will be considered to be a "**Qualified Bidder**".

21. The Monitor may determine, after consultation with the Applicants and the DIP Lenders, whether Potential Bidders for the Assets that have not met one or more of the requirements specified above may nonetheless be considered Qualified Bidders.

Due Diligence

22. The Applicants may in their reasonable business judgment, and subject to competitive and other business considerations, afford access to due diligence materials and information to

each Qualified Bidder and any other person seeking to become a Qualified Bidder that has executed a confidentiality agreement as described in subparagraph 16(a). The Applicants will grant such access to due diligence materials and information relating to the Assets as the Applicants deem appropriate after consultation with the Monitor and the DIP Lenders. Due diligence access may include management presentations as may be scheduled by the Applicants, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Applicants, in their reasonable business judgment, may agree. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated; it is currently the intention of the Monitor to require all such requests to be communicated in writing (including by e-mail) to the Monitor's representative, with a copy to the Financial Advisor.

23. No additional due diligence for any party other than a Qualified Bidder who has submitted a Qualified Bid will continue after the Bid Deadline (as defined below). Neither the Applicants nor any of their affiliates (or any of their respective representatives) will be obligated to furnish any information relating to the Assets to any person other than to Qualified Bidders. The Applications will make no representation or warranty as to the information to be provided through this due diligence process or otherwise, except as set forth in any definitive transaction agreement(s) with the Successful Bidder, if any.

Bid Deadline and Submission of Qualified Bids

24. A Qualified Bidder that desires to make a bid needs to make sure the bid is received by the Notice Parties no later than December 9, 2013 at 5:00 p.m. (ET) (the "**Bid Deadline**"). The Monitor, after consultation with the Applicants and the DIP Lenders, may extend the Bid Deadline once or successively, but is not obligated to do so. If the Monitor extends the Bid Deadline, the Monitor will promptly notify all Qualified Bidders and the Notice Parties.

25. A bid submitted will be considered a "**Qualified Bid**" only if the bid is submitted by a Qualified Bidder and complies (either individually or in combination with other bids that make up one Qualified Bid) with all of the following:

(a) the bid is an offer to purchase some or all of the assets on terms and conditions reasonably acceptable to the Monitor, as determined after consultation with the Applicants and the DIP Lenders;

(b) it includes a letter stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the Sale to the Successful Bidder, and (ii) 21 days from the Sale Approval Motion, subject to further extensions as may be agreed to under the applicable transaction agreement(s);

(c) it includes duly authorized and executed transaction agreement(s), including the purchase price for the Assets expressed in Canadian dollars (the "**Purchase Price**") together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed orders to approve the sale by the Court;

(d) it includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction,

(e) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining financing;

(f) it fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring, financing, participating in or benefitting from such bid;

(g) it includes a commitment by the Qualified Bidder that, if selected as the Successful Bidder, it will provide a non-refundable deposit upon being selected and, in any event, prior to the service of application materials for a motion seeking approval of the Successful Bid;

(h) it includes an acknowledgement and representation of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Applicants;

(i) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction agreement(s) submitted by the Qualified Bidder;

(j) it contains other information reasonably requested by the Monitor, in consultation with the Applicants and the DIP Lenders; and

(k) it is received by the Bid Deadline.

26. The Monitor may determine, in consultation with the Applicants and the DIP Lenders, whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids; provided that the Monitor, in evaluating such bids, may not waive substantial compliance with any of the above requirements without prior written consent of the Applicants and the DIP Lenders.

27. Within three (3) business days of the expiration of the Bid Deadline, or at such later time as the Monitor deems appropriate after consultation with the Applicants and the DIP Lenders, the Monitor shall notify each Qualified Bidder in writing as to whether such Qualified Bidder’s bid constituted a Qualified Bid.

<u>Selection of Successful Bid</u>

28. The Monitor, in consultation with the Applicants and the DIP Lenders, (a) will review and evaluate each Qualified Bid, and (b) identify the highest or otherwise best offer for the Assets (the “**Successful Bid**”, and the Qualified Bidder making such Successful Bid, the

"**Successful Bidder**"). Each Qualified Bid may be negotiated among the Applicants, in consultation with the Monitor and the DIP Lenders, and the applicable Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations.

29. A Qualified Bid will be evaluated based upon several factors, including, without limitation, items such as the purchase price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transactions), the Assets included or excluded from the bid, the transition services (if any) required from the Applicants post-closing, and any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation with the Applicants and the DIP Lenders. For purposes of evaluation, the Monitor may, following consultation with the Applicants and the DIP Lenders, aggregate separate bids from unaffiliated Potential Bidders to create one Qualified Bid from one or more Qualified Bidders, provided that all such bidders shall remain subject to the requirements preventing collusion in these Sale Procedures.

30. The determination of any Successful Bid by the Monitor, after consultation with the Applicants and the DIP Lenders, shall be final subject to approval by the Court.

31. Neither the Monitor nor the Applicants shall have any obligation to select a Successful Bid, and they reserve the right, after consultation with the DIP Lenders, to reject any or all Qualified Bids.

Powers of the Monitor

32. As indicated above, under the proposed Sale Process the Monitor will be authorized to (a) extend the Participation Deadline, (b) extend the Bid Deadline, or (c) cancel the Sale Process, in each case after consultation with the Applicants and the DIP Lenders.

33. In addition, the Monitor, after consultation with the Sellers and the DIP Lenders, may (a) reject at any time before the issuance and entry of an Order approving a Qualified Bid, any

bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Procedures or any Order of the Court, or (iii) contrary to the best interests of the Applicants or their creditors; and (b) may modify the Sale Procedures or impose additional terms and conditions on the sale of the Assets.

Potential Variations or Alternatives to Sale Process

34. In order to maximize the ability of the Applicants to achieve an outcome acceptable to their stakeholders on an expedited basis, the proposed Sale Process provides:

(a) that notwithstanding any other provision of the Sale Process, the Applicants shall have the right to enter into an exclusive transaction for all or part of the business or assets of the Applicants prior to the Participation Deadline; and

(b) that the Sale Process shall not limit the right of the DIP Lenders or any noteholder to advance a recapitalization or CCAA plan.

*Monitor's Analysis*

35. The Monitor is of the view that the proposed Sale Process is an appropriate course of action for the Applicants at the present time. In particular, the Monitor notes the following:

(a) while Mobilicity believes that a going concern sale transaction is the optimal solution for its stakeholders, the proposed Sale Process will provide flexibility to maximize value by allowing Potential Bidders to bid for only some of the Assets;

(b) although the timeline for submission of Qualified Bids is relatively short (slightly less than 30 days), as described in detail in the application materials for the Initial Order, the business of Mobilicity has been widely marketed for sale, refinancing and/or the provision of DIP financing. . It is the Monitor's understanding from discussions with the CRO and with representatives of the Financial Advisor that a detailed electronic data room has already been established by the Applicants in connection with these initiatives, and that many of the parties that expressed an interest in purchasing or providing DIP financing to the Applicants have already performed extensive due diligence through access to the electronic data room and discussions with management. As the same parties are expected to comprise all or most of the Potential Bidders, it is reasonable to expect that those parties will be able to respond quickly to the proposed Sale Process. Accordingly, it is currently the Monitor's view that the timeline for the proposed Sale Process provides an appropriate balance between maximizing potential gross realizations and the uncertain net realization resulting from, among other issues, Mobilicity's continued negative cash flow; and

(c) the proposed Sale Process does not preclude Mobilicity from pursuing any other restructuring options, including other asset sale alternatives, or transactions that may be presented outside of the Sale Process, thereby maintaining flexibility for Mobilicity to achieve the best available result, subject to the approval of this Court.

36. Consequently, the Monitor supports the proposed Sale Process.

**DISTRIBUTION OF QUARTERLY INFORMATION**

37. In the First Report, the Monitor noted that it was its understanding that during the period before the Initial Order the unaudited quarterly financial information was provided on a quarterly basis to the trustee of the First Lien Note indenture for distribution to holders of the First Lien Notes. Counsel to the indenture trustee has requested that the Monitor clarify that the indenture trustee did not have a role in this information distribution process.

38. The Monitor also understands that during this CCAA proceeding, Mobilicity does not intend to distribute quarterly information to the holders of the First Lien Notes, in part because the remedies of holders of the First Lien Notes are stayed by the Initial Order and in part because of the financial disclosure in these CCAA proceedings.

**MONITOR'S CONCLUSIONS AND RECOMMENDATION**

39. The Monitor is of the view that the Applicants have acted in accordance with the Initial Order, in good faith, and with due diligence.

40. The Monitor recommends that the Court approve the Applicants' request for an order approving the proposed Sale Process.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11TH DAY OF NOVEMBER 2013

**ERNST & YOUNG INC.**

**in its capacity as the court-appointed Monitor of Data & Audio-Visual Enterprises Holdings Inc., Data & Audio-Visual Enterprises Wireless Inc., and 8440522 Canada Inc.**

Per:

Mike Dean
Senior Vice President

Alex Morrison
Senior Vice President

Christopher Mediratta
Vice President

Court File No. CV-13-10274-00CL

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 8440522 CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC.**

**Applicants**

**AFFIDAVIT OF WILLIAM E. AZIZ**
**(sworn November 7, 2013)**

I, **William E. Aziz**, of the City of Oakville, in the Province of Ontario MAKE OATH AND SAY:

1. I am the President of BlueTree Advisors II Inc. ("**BlueTree**"), which has been retained by Data & Audio-Visual Enterprises Holdings Inc. ("**Holdings**") to provide my services to Holdings and its affiliates[1] (collectively, with Holdings, the "**Mobilicity Group**") as Chief Restructuring Officer of the Mobilicity Group. I am a director of each of the Mobilicity Group entities. BlueTree was retained pursuant to an Engagement Letter dated April 24, 2013.

2. My engagement was ratified and confirmed by Order of this Court on September 30, 2013 (the "**Initial Order**").

3. As described in my affidavit sworn September 29, 2013 (the "**Initial Order Affidavit**") in these proceedings, I have been overseeing the restructuring efforts of the Mobilicity Group since April 24, 2013 and, as such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have spoken with certain

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[1] The affiliates of Holdings are 8440522 Canada Inc. and Data & Audio-Visual Enterprises Wireless Inc.

of the directors, officers, advisors and/or employees of the Mobilicity Group, as necessary, and, where I have relied upon information from such discussions, I believe such information to be true. A copy of my Initial Order Affidavit, excluding exhibits, is attached as Exhibit "A" hereto.

4. This affidavit is sworn in support of a motion by the Mobilicity Group approving proposed sale procedures (the "**Sale Procedures**") in respect of a sale process for the assets and business of the Mobilicity Group. A copy of the Sale Procedures is attached hereto as Exhibit "B". Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Sale Procedures. If there are inconsistencies between any summary of the Sale Procedures contained herein and the terms and conditions of the Sale Procedures, the terms and conditions of the Sale Procedures shall govern.

## Background

5. Following the issuance of the Initial Order, the Applicants focussed on maintaining the stability of their business and continued their efforts in furtherance of their proposed acquisition transaction (the "**Proposed Transaction**").

6. On October 24, 2013, the Applicants sought and obtained an Order extending the Stay Period (as defined in the Initial Order) to December 20, 2013.

7. The Mobilicity Group has had ongoing discussions with Industry Canada regarding the Proposed Transaction and continues to have a dialogue with Industry Canada. In particular, the Applicants are reviewing information received from Industry Canada and exploring with Industry Canada the Proposed Transaction and other additional matters related to transactions affecting the Mobilicity Group's business.

8. The Mobilicity Group is also considering other alternatives to maximize the value of its assets for the benefit of its stakeholders.

9. A number of parties have expressed interests over the past weeks and months in some or all of the assets of the Mobilicity Group and I believe that a Court-supervised sale process will allow those interests to be considered in a fair and organized manner, under the supervision of the Court-appointed Monitor.

**Mobilicity Group Business and Assets**

10. The Mobilicity Group carries on business as a Canadian wireless telecommunications carrier. It provides cellular service to Canadians in five urban markets across Canada: Ottawa, Toronto, Calgary, Edmonton and Vancouver, and has roaming agreements to provide continuity of service to its customers when they are travelling outside these markets. In addition to voice, text, data and long distance cellular services, the Mobilicity Group offers hardware (handsets and accessories) to its customers, referred to as "subscribers" in the telecommunications industry.

11. The Mobilicity Group's assets are described in detail in the Initial Order Affidavit. These assets generally fall within the following categories: wireless spectrum licenses, subscribers, network hardware assets, site or corporate store leases and tax losses.

12. The Mobilicity Group's most valuable assets are its wireless spectrum licenses. In 2008, Industry Canada released a new cache of spectrum licences by holding an auction (the "**2008 Spectrum Auction**") for qualified bidders. At the 2008 Spectrum Auction, Wireless acquired 10 licences (the "**Spectrum Licences**") for $243 million, which was funded through an investment in Holdings. The Spectrum Licences have an initial term of 10 years and will expire in February 2019. Renewal of the Spectrum Licences will be determined by Industry Canada at a later date. The Spectrum Licenses continue to be valuable assets of the Mobilicity Group.

13. Applicable conditions state that the Spectrum Licenses may not be transferred or leased to, acquired by means of a change in ownership or control of the licensee, divided among, or exchanged with companies that do not meet the criteria of a new entrant, for a period of five years from the date of issuance. In the case of the Spectrum Licenses, that five year period expires on February 12, 2014 (the "**Moratorium Termination Date**").

14. In June 2013, Industry Canada announced that it will be holding another spectrum auction commencing on January 14, 2014 (the "**2014 Spectrum Auction**"). The Mobilicity Group will not participate in the 2014 Spectrum Auction.

**The Sale Procedures**

15. The Mobilicity Group has undertaken a review of its circumstances in consultation with the DIP Lenders and the Monitor as well as the Mobilicity Group's financial and legal advisors. This review has resulted in a determination that the best course of action at this time is to commence a formal sale process for the Mobilicity Group and its assets.

16. In electing to seek approval of the Sale Procedures, the Mobilicity Group has considered the best ways to maximize value for all stakeholders and the best interests of the Mobilicity Group's stakeholder community. The Mobilicity Group is not aware of any stakeholder that objects to a sales process or any stakeholder who would be prejudiced by the Sale Procedures.

17. The Sale Procedures do not preclude the pursuit of any other restructuring options, including other asset sale alternatives, or transactions that may be presented outside of the Sale Procedures, thereby maintaining flexibility for the Mobilicity Group to achieve the best available result, subject to the approval of this Court.

18. In addition, while the Mobilicity Group believes that a going concern sale transaction is the optimal solution for its stakeholders, Sale Procedures will provide flexibility for the potential bidders to bid for only some of the Mobilicity Group's assets.

19. A brief summary of the Sale Procedures follows:

(a) The Sale Procedures will be conducted in a manner such that all interested parties have a fair and equal opportunity to participate in the process. The Monitor will oversee the sale process, in consultation with the Mobilicity Group, its Financial Advisors (as such term is defined in the Initial Order Affidavit) and the DIP Lenders.

(b) The Sale Procedures contemplate a sale, in one or more transactions, on an "as is, where is" basis, of all or substantially all of the business and assets or shares of Wireless and/or Holdings, including a transaction pursuant to which all of the shares of Holdings or Wireless are arranged to be held by a Successful Bidder.

(c) A Transaction Order from the Court approving an ultimately Successful Bid will be required.

(d) The Monitor, in consultation with the Mobilicity Group, its Financial Advisors and the DIP Lenders will determine if a Potential Bidder is a Qualified Bidder based upon enumerated criteria.

(e) The deadline for Qualified Bids from Qualified Bidders will be December 9, 2013.

20. The Monitor, after consultation with the Mobilicity Group, its Financial Advisors and the DIP Lenders, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; (b) reject at any time before the issuance and entry of an order approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Procedures or any order of this Court, or (iii) contrary to the best interests of the Mobilicity Group or its creditors; and (c) modify the Sale Procedures in accordance with their terms or impose additional terms and conditions on the sale of the assets.

21. The Sale Procedures require interested parties to submit a bid on a relatively expeditious timeline, which will allow the Mobilicity Group to determine its available options as soon as possible.

22. I believe that there is a readily identifiable group of parties who may have an interest in completing a transaction for the purchase of the Mobilicity Group assets, and that given those parties' familiarity with the industry and/or the Mobilicity Group, I believe the timelines set forth in the Sale Procedures are appropriate.

23. A limited marketing process is also appropriate in the circumstances given that, as described in paragraphs 92 and 93 of the Initial Order Affidavit, the Mobilicity Group and its assets have been offered for sale to the market for over a year prior to the commencement of these proceedings, and also given the fact that these proceedings and the Mobilicity Group's efforts to market its business have been highly publicized.

24. The Mobilicity Group has concluded that the proposed sale process represents the best available alternative at this time given:

(a) the current status of the Proposed Transaction;

(b) the Mobilicity Group's existing liquidity position;

(c) the Mobilicity Group's continuing (though reduced) operating losses;

(d) the upcoming Moratorium Termination Date;

(e) the review of strategic alternatives to date, which suggests that there is no better viable alternative to a sale transaction; and

(f) a going concern sale, if possible, would preserve jobs for employees and services for subscribers.

**Conclusion**

25. The approval of the Sale Procedures will facilitate the continuation of the Mobilicity Group's steps toward its restructuring goals, which, if successful, will permit the Mobilicity Group to complete a successful sale of its business, to the benefit of all stakeholders.

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| **SWORN BEFORE ME** at the City of Toronto, in the Province of Ontario, on November 7, 2013.<br><br>Commissioner for Taking Affidavits<br>Daniel Pearlman | WILLIAM E. AZIZ |

## Sale Procedures

Set forth below are the Sale Procedures (the "**Sale Procedures**") to be employed with respect to the proposed sale of all or substantially all of the business and assets or shares of Data & Audio Visual Enterprises Wireless Inc. ("**Wireless**") and Data & Audio Visual Enterprise Holdings Inc. ("**Holdings**", together with Wireless, the "**Sellers**").

On September 29, 2013, the Sellers and 8440522 Canada Inc. (collectively, the "**Debtors**") commenced proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the "**CCAA Proceedings**") before the Ontario Superior Court of Justice (the "**Court**").

On November 13, 2013, the Debtors obtained a sale procedures order (the "**Sale Procedures Order**") under the CCAA from the Court approving these Sale Procedures.

Pursuant to the Sale Procedures, the Debtors, with their financial advisor, Canaccord Genuity Corp. (the "**Financial Advisor**"), will pursue a sale of the Assets (as defined below) under a fair and competitive sale process under the supervision of Ernst & Young Inc., in its capacity as the Court-appointed monitor in the CCAA Proceedings (the "**Monitor**"), and the Court, pursuant to which all interested parties will be provided with a fair and equal opportunity to participate in the Sale Process (as defined below).

Notwithstanding anything contained herein, the Sellers shall have the right to enter into an exclusive transaction for the sale of the Assets, or any portion thereof, outside of the Sale Process prior to the Participation Deadline (as defined below) on terms acceptable to the Sellers, the Monitor and the purchasers under the DIP Note Purchase and Guarantee Agreement dated September 30, 2013 (collectively the "**DIP Lenders**").

## Sale Process

The Sale Procedures set forth herein describe, among other things, (a) the Assets available for sale, (b) the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Assets, (c) the manner in which bidders and bids can become Qualified Bidders (as defined below) and Qualified Bids (as defined below), (d) the receipt and negotiation of bids received, (e) the ultimate selection of any Successful Bidder (as defined below), and (f) the approval thereof by the Court (collectively, the "**Sale Process**"). The Monitor intends to consult with the Sellers and the DIP Lenders and their respective advisors throughout the Sale Process.

## Assets To Be Sold

The Sellers are offering for sale, in one or more transactions, substantially all of the Sellers' business and assets (the "**Assets**"). The Sellers reserve the right to eliminate certain assets available for sale pursuant to the Sale Process prior to the Bid Deadline (as defined below). For the purposes of these Sale Procedures, a sale of the Assets also includes a transaction pursuant to which the shares of the Sellers are arranged by or sold to the Successful Bidder.

### "As Is, Where Is"

The sale of the Assets will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature or description by the Sellers, its agents or estates, except to the extent set forth in a definitive transaction agreement signed by the Sellers and the Successful Bidder. By submitting a bid, each Potential Bidder (as defined below) shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in these Sale Procedures or as set forth in a definitive transaction agreement signed by the Sellers and the Successful Bidder.

### Free Of Any And All Claims And Interests

Except as may otherwise be provided in the Successful Bidder's transaction agreement, all of the rights, title and interests of the Sellers in and to the Assets, or any portion thereof, will be sold free and clear of all Liens and Claims (which may be defined in the Transaction Order (as defined below)), subject to any Permitted Encumbrances (which may be defined in the Transaction Order), pursuant to an order by the Court approving the sale of the Assets, or a portion thereof, and vesting in the Successful Bidder all of the Sellers' rights, title and interests in and to such Assets, or a portion thereof, whether by way of an approval and vesting order or a sanction order, the "**Transaction Order**"), when granted, such Liens and Claims to attach to the net proceeds of the sale of such Assets.

### Publication Notice

Within three (3) days of entry of the Sale Procedures Order by the Court, or as soon as practicable thereafter, (i) the Sellers shall publish notice of these Sale Procedures in *The Globe and Mail (National Edition)* and (ii) the Sellers shall issue a press release regarding the Sale Process through Canada Newswire, designating dissemination in Canada and major financial centers in the United States.

### Solicitation of Interest

As soon as reasonably practicable after the granting of the Sale Procedures Order, the Financial Advisor, in consultation with the Sellers, the Monitor and the DIP Lenders, will prepare an initial offering summary (the "**Teaser Letter**") notifying prospective purchasers of the Assets (both strategic and financial parties (including existing shareholders and noteholders of the Sellers and parties proposed by the DIP Lenders)) of the existence of the Sale Process and inviting prospective purchasers to express their interest in making an offer for the Assets.

### Participation Requirements

Unless otherwise ordered by the Court or as otherwise determined by the Monitor, in consultation with the Sellers and the DIP Lenders, in order to participate in the Sale Process, prior to December 2, 2013 at 10:00 p.m. (ET) (as may be extended as set out below, the "**Participation Deadline**"), each person who wishes to participate in the Sale Process, and in the event that such person is an entity formed for the purpose of acquiring the Assets, or any portion thereof, each actual or proposed holder of the equity (whether in the form of stock, partnership interests, LLC interests, debt issued in connection with such person's bid for the Assets or otherwise) or proposed beneficiary of such person through license or similar arrangement granted in connection with such person's bid (each, an "**Equity Holder**") (each such person who wishes to participate in the Sale Process and each Equity Holder thereof, a "**Potential Bidder**") must deliver to the Notice Parties (as defined below) at the addresses provided below all of the following documents (the "**Participation Materials**"):

a) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Sellers to such Potential Bidder) in a form and substance acceptable to the Sellers, and which shall inure to the benefit of any purchaser of the Assets, or any portion thereof. In the event the Potential Bidder has already entered into a confidentiality agreement with either of or both of the Sellers, prior to the distribution of any additional confidential information by the Sellers to such Potential Bidder, such Potential Bidder must provide a statement waiving any of its rights under such confidentiality agreement that are in conflict with the Sale Procedures or that would otherwise prohibit disclosures regarding the Potential Bidder, or any transactions it may enter into with the Sellers, to the Notice Parties and other Qualified Bidders who submit a Qualified Bid;

b) current audited financial statements and latest unaudited financial statements of the Potential Bidder, or such other form of financial disclosure and credit quality support or enhancement that allows the Monitor, in consultation with the Sellers, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate a sale;

c) confirmation that the Potential Bidder has not engaged and will not engage in any collusion with respect to the bidding or the transactions, and if such Potential Bidder is an entity formed for the purpose of acquiring the Assets, or any portion thereof, confirmation from each of the Equity Holders of such Potential Bidder that such Equity Holder has not engaged and will not engage in any collusion with respect to the bidding or the transactions, such confirmation, in each case, in form and substance satisfactory to the Monitor; and

d) a statement outlining the Potential Bidder's interest in purchasing the Assets, or a portion thereof, from the Sellers, including: (i) any Assets expected to be excluded; (ii) the structure and financing of the sale (including, but not limited to, the sources of financing for the purchase price and all requisite financial assurance); (iii) any anticipated corporate or other approvals required to close the sale, the anticipated time frame and any anticipated impediments for obtaining such approvals; and (iv) any conditions to closing that the Potential Bidder may wish to impose.

The Monitor, after consultation with the Sellers and the DIP Lenders, may extend the Participation Deadline once or successively, but is not obligated to so.

If it is determined by the Monitor, after consultation with the Sellers and the DIP Lenders, that a Potential Bidder: (i) has a *bona fide* interest in an acquisition of the Assets; (ii) has delivered all of the Participation Materials prior to the Participation Deadline; and (iii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on such Potential Bidder's financial information; such Potential Bidder will be deemed a "**Qualified Bidder**". The determination as to whether a Potential Bidder is a Qualified Bidder will be made as promptly as practicable after a Potential Bidder delivers all of the Participation Materials, and each such determination shall be reported to each of the Notice Parties and to the applicable Qualified Bidder. The Monitor may determine, after consultation with the Sellers and the DIP Lenders, whether to entertain bidders for the Assets that have not met one or more of the requirements specified above and deem such bidders to be Qualified Bidders.

**Due Diligence**

The Sellers may in their reasonable business judgment, and subject to competitive and other business considerations, afford each Qualified Bidder and any other person seeking to become a Qualified Bidder that has executed a confidentiality agreement as described in clause (a) under the heading "Participation Requirements" above with the Sellers such access to due diligence materials and information relating to the Assets as the Sellers deem appropriate after consultation with the Monitor and the DIP Lenders. Due diligence access may include management presentations as may be scheduled by the Sellers, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Sellers, in its reasonable business judgment, may agree. The Monitor will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. No additional due diligence for any party other than a Qualified Bidder who has submitted a Qualified Bid will continue after the Bid Deadline (as defined below). Neither the Sellers nor any of their affiliates (or any of their respective representatives) will be obligated to furnish any information relating to the Assets to any person other than to Qualified Bidders. The Sellers make no representation or warranty as to the information to be provided through this due diligence process or otherwise, except as set forth in any definitive transaction agreement(s) with the Successful Bidder.

**Bid Deadline**

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid to each of the following parties (collectively, the "**Notice Parties**"): (i) the Monitor, Ernst & Young Inc., Ernst & Young Tower, 222 Bay Street, Toronto, ON M5K 1J7, Attention: Mike Dean, email: mike.p.dean@ca.ey.com; (ii) counsel to the Sellers, Norton Rose Fulbright Canada LLP, Royal Bank Plaza, South Tower, 200 Bay Street, Suite 3300, P.O. Box, Toronto, ON M5J 2Z4, Attention: Virginie Gauthier, fax: 416-216-3930, e-mail: virginie.gauthier@nortonrosefulbright.com; (iii) Canaccord Genuity Corp., Brookfield Place, 161 Bay Street, Suite 3000, Toronto, ON M5J 2S1, Attention: Barry Goldberg and Michael Levin, e-mail: bgoldberg@canaccordgenuity.com and mlevin@canaccordgenuity.com; and (iv) counsel to the DIP lenders, Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON M5H 2S7, Attention: Robert Chadwick, fax: 416-979-1234, e-mail: rchadwick@goodmans.ca, so as to be received by the Monitor no later than December 9, 2013 at 5:00 p.m. (ET) (as may be extended as set out below, the "**Bid Deadline**"). The Monitor, after consultation with the Sellers and the DIP Lenders, may extend the Bid Deadline once or successively, but is not obligated to do so. If the Monitor extends the Bid Deadline, the Monitor will promptly notify all Qualified Bidders and the Notice Parties.

**Qualified Bid**

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies (either individually or in combination with other bids that make up one Qualified Bid) with all of the following (a "**Qualified Bid**"):

a) the bid (either individually or in combination with other bids that make up one Qualified Bid) is an offer to purchase some or all of the Assets on terms and conditions reasonably acceptable to the Monitor, as determined after consultation with the Sellers and the DIP Lenders;

b) it includes a letter stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such Qualified Bidder is selected as the Successful Bidder, its offer shall remain irrevocable until the earlier of (i) the closing of the Sale to the Successful Bidder, and (ii) 21 days from the Sale Approval Motion, subject to further extensions as may be agreed to under the applicable transaction agreement(s);

c) it includes a duly authorized and executed transaction agreement(s), including the purchase price for the Assets expressed in Canadian dollars (the "**Purchase Price**") together with all exhibits and schedules thereto, all applicable ancillary agreements with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), and proposed orders to approve the sale by the Court;

d) it includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Monitor, in consultation with the Sellers and the DIP Lenders, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the Sale;

e) it is not conditioned on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining financing;

f) it fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), participating or benefiting from (including through license or similar arrangement with respect to the assets to be acquired in connection with such bid), such bid, and the complete terms of any such sponsorship, participation, financing or benefit, such disclosure to include, without limitation: (i) in the case of a Qualified Bidder formed for the purposes of acquiring Assets (or any portion thereof), the identity of each of the actual or proposed Equity Holders of such Qualified Bidder and the terms and participation percentage of such Equity Holder's interest in such bid; and (ii) the identity of each entity that has or will receive a benefit from such bid from or through the Qualified Bidder or any of its Equity Holders and the terms of such benefit;

g) it includes a commitment by the Qualified Bidder to provide a non-refundable deposit upon being selected as the Successful Bidder and in any event, prior to service of the materials for the Sale Approval Motion (as defined below);

h) it includes an acknowledgement and representation of the Qualified Bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) signed by the Sellers;

i) it includes evidence, in form and substance reasonably satisfactory to the Monitor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the transaction agreement(s) submitted by the Qualified Bidder;

j) it contains other information reasonably requested by the Monitor, in consultation with the Sellers and the DIP Lenders; and

k) it is received by the Bid Deadline.

The Monitor may determine, in consultation with the Sellers and the DIP Lenders, whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids; provided that the Monitor, in evaluating such bids, may not waive substantial compliance with any of the above requirements without prior written consent of the Sellers and the DIP Lenders.

The Monitor shall notify each Qualified Bidder in writing as to whether such Qualified Bidder's bid constituted a Qualified Bid within three (3) business days of the expiration of the

Bid Deadline, or at such later time as the Monitor deems appropriate after consultation with the Sellers and the DIP Lenders.

If the Monitor, after consultation with the Sellers and the DIP Lenders, is not satisfied with the number or terms of the Qualified Bids submitted by the Bid Deadline, the Monitor may extend the Bid Deadline, or cancel the Sale Process.

**Aggregate Bids**

The Monitor may, following consultation with the Sellers and the DIP Lenders, aggregate separate bids from unaffiliated Potential Bidders to create one "Qualified Bid" from one or more "Qualified Bidders"; provided that all such bidders shall remain subject to the requirements preventing collusion in these Sale Procedures.

**Evaluation of Competing Bids**

A Qualified Bid will be valued based upon several factors, including, without limitation, items such as the Purchase Price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed, certainty and value of the transaction (including any regulatory approvals required to close the transactions), the assets included or excluded from the bid, the transition services required from the Sellers post-closing, if any, and any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation the Sellers and the DIP Lenders.

**Selection of Successful Bid**

The Monitor, in consultation with the Sellers and the DIP Lenders, (a) will review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated among the Sellers, in consultation with the Monitor and the DIP Lenders, and the applicable Qualified Bidder, and may be amended, modified or varied to improve such Qualified Bid as a result of such negotiations, and (b) identify the highest or otherwise best offer for the Assets (the "**Successful Bid**", and the Qualified Bidder making such Successful Bid, the "**Successful Bidder**"). The determination of any Successful Bid by the Monitor, after consultation with the Sellers and the DIP Lenders, shall be subject to approval by the Court.

Neither the Monitor nor the Sellers shall have any obligation to select a Successful Bid, and they reserve the right, after consultation with the DIP Lenders, to reject any or all Qualified Bids.

**Sale Approval Motion Hearing**

The motion for an order of the Court approving any Successful Bid or any plan to give effect to any Successful Bid (the "**Sale Approval Motion**") shall be set by the Monitor.

At the hearing of the Sale Approval Motion, the Sellers shall seek, among other things, approval from the Court to consummate any Successful Bid.

All the Qualified Bids other than the Successful Bid, if any, shall be deemed rejected by the Sellers on and as of the date of approval of the Successful Bid by the Court.

**Reservation of Rights**

The Monitor, after consultation with the Sellers and the DIP Lenders, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; (b) reject at any time before the issuance and entry of an order approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Sale Procedures or any order of the Court, or (iii) contrary to the best interests of the Sellers or its creditors; and (c) may modify the Sale Procedures or impose additional terms and conditions on the sale of the Assets.

Neither the Monitor nor the Sellers shall have any obligation to select a Successful Bid, and they reserve the right, after consultation with the DIP Lenders, to reject any or all Qualified Bids.

Nothing herein shall limit the right of any holders of notes of the Sellers, including holders of the senior secured notes, the unsecured notes, the bridge notes and the DIP notes, to advance a recapitalization or CCAA plan.

**Miscellaneous**

These Sale Procedures are solely for the benefit of the Sellers and nothing contained in the Sale Procedures Order or these Sale Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Sale Procedures Order.

Except as provided in the Sale Procedures Order and Sale Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Sale Procedures Order and the Sale Procedures.

**Limitation of Liability**

The Monitor shall not have any liability whatsoever to any person or party, including without limitation any Potential Bidder, the Sellers, the DIP Lenders or any creditor or other stakeholder, for any act or omission related to the process contemplated by these Sale Procedures. By submitting a bid, each Potential Bidder shall be deemed to have agreed that it has no claim against the Monitor for any reason whatsoever.