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")

SUPPLEMENT TO THE TENTH REPORT OF THE MONITOR

January 27, 2015

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. The stay of proceedings was most recently extended to January 30, 2015 pursuant to an order of this Court dated November 27, 2014.

3. This Report is supplemental to the Tenth Report of the Monitor dated January 23, 2015 (the "**Tenth Report**").

PURPOSE

4. The purpose of this Supplement to the Tenth Report (the "**Supplementary Report**") is to provide information to the Court with respect to the Applicant's motion to seek approval:

    a) to amend the title of the proceedings to include Mobilicity SpectrumCo. (as defined below);
    b) of debtor in possession ("**DIP**") financing and other ancillary relief;
    c) to extend the Stay of Proceedings to May 8, 2015; and
    d) of the activities of the Monitor as outlined in the Tenth Report.

DISCLAIMER

5. In preparing this Supplemental 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 Supplemental 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 Supplemental 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

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

7. Copies of this Supplemental 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**").

8. Capitalized terms not defined herein have the same meanings as defined in the Applicants' materials or the Monitor's previous reports in these proceedings.

STRATEGIC DEVELOPMENTS

AWS-3 Auction

9. As described in the affidavit of William Aziz dated January 26, 2015 (the "**Supplementary Affidavit**"), a supplement to his Affidavit sworn on January 21, 2015 (the "**January 21 Affidavit**"), the Applicants have considered, with the assistance of their financial advisors, the incremental value to the business and the potential benefits to all stakeholders that could result from the acquisition of the additional spectrum in the AWS-3 Auction (the "**Auction**").

10. As described in the January 21 Affidavit, Industry Canada has "set aside" certain AWS-3 spectrum for "operating new entrants". Mobilicity would qualify as an "operating new entrant" in certain regions based on the criteria defined by Industry Canada.

11. The Applicants have also obtained clarification of the Auction Framework and participation requirements from Industry Canada.

    a) The deadline for submitting a refundable deposit of approximately $62 million, (the "**Deposit**") being the amount which would enable Mobilicity to participate in all regions where it currently operates, either in cash or by an irrevocable standby letter of credit, is January 30, 2015;

b) The deadline for sealed bids to be submitted is March 3, 2015, with the announcement and publication of provisional license winners on March 6, 2015;

c) The final payment shall be submitted by March 20, 2015; and

d) Among other things, "any discussions involving two bidders or any of their affiliates or associates regarding an addition or a significant change of beneficial ownership of a bidder, from the receipt deadline for applications until the public announcement of provisional license winners by Industry Canada, would fall into the area of prohibited discussions and would be considered contrary to the auction rules".

12. The Applicants, with the assistance of their financial advisor, have determined that it is in the best interests of the Applicants and the stakeholders for the Applicants to complete the application process and submit the Deposit in the Auction in order to maintain the flexibility of potentially purchasing additional spectrum in the Auction.

Mobilicity SpectrumCo.

13. 2451608 Ontario Inc. has now been formed under the *Business Corporations Act* (Ontario), ("**Mobilicity SpectrumCo**") as a wholly-owned subsidiary of Wireless with no material assets or liabilities. The Applicants are seeking to have Mobilicity SpectrumCo added as an Applicant in these proceedings.

14. Mobilicity SpectrumCo currently carries on no business. As described in the Supplementary Affidavit, the subsidiary has been incorporated for the purpose of applying to participate, as an affiliated entity of the Applicants, in the Auction and submitting the Deposit to be funded by the Second DIP Loan Agreement (as defined below).

15. The use of this structure in connection with the Auction and the Deposit is a term of the Second DIP Loan Agreement.

DIP Financing

16. After reviewing a number of financing options and consulting with their financial and legal advisors, the Applicants have concluded that proceeding with the facility under the Second

DIP Loan Agreement is the best financing option available to them. The second DIP Loan Agreement is structured off of the First DIP Loan Agreement approved by the Court on September 30, 2013.

17. In order to finance the Deposit and apply to participate in the Auction, the Applicant is seeking approval of (i) a DIP Note Purchase and Guarantee Agreement dated as of January 26, 2015 Affidavit (the "**Second DIP Loan Agreement**"), a copy of which is attached as Exhibit "A" to the Supplementary Affidavit, pursuant to which the Applicants and Equity Financial Trust Company, as collateral agent and certain of the noteholders who are part of the Ad Hoc Committee (the "**DIP Lender**" or the "**Purchaser**") will provide financing (the "**DIP Facility**" or the "**DIP Notes**") to the Applicants in the maximum amount of $65 million, and (ii) the creation of a related charge to secure the DIP Facility (the "**DIP Lender's Charge**").

18. The following is a summary of certain of the material terms in the Second DIP Loan Agreement. Capitalized terms not defined in this section have the meanings ascribed to them in the Second DIP Loan Agreement:

a) The DIP Notes will be issued by Wireless and guaranteed by Holdings, 8440522 Canada Inc. and Mobilicity SpectrumCo;

b) The Applicants are authorized, subject to the terms of the Second DIP Loan Agreement, to use advances under the DIP Notes for Wireless' pre-auction Deposit due on January 30, 2015 for the Auction conducted by Industry Canada in March 2015;

c) The maximum principal amount that may be advanced is $65,000,000 (the "**Total Commitment**"). The DIP Notes will be issued in a single tranche on or before January 30, 2015;

d) Borrowings will bear interest at 1% per annum, to be paid at the time of repayment of the DIP. Upon the occurrence of an Event of Default, the rate would increase by 2% per annum, compounded monthly on the last day of each month and payable on demand.

e) The Applicant will pay the DIP Lender a fee of $1,950,000, which is equal to 3% of the Total Commitment. That fee is payable upon the issuance of the DIP Notes;

f) The DIP Facility matures on the earliest of the occurrence of: (i) seven days from the date on which demand is made at the sole discretion of the DIP Lender; (ii) the date on which demand is made following the occurrence of an Event of Default (an "**Event of Default**"); (iii) any Deposit is withdrawn by Wireless or returned by Industry Canada; and (iv) upon any mandatory repayment obligation or redemption offer under the Senior Indenture; and

g) Wireless and Holdings shall be free to prepay any principal amount of the DIP Notes in whole or in part without premium or penalty.

19. Among other things, the following conditions shall be met in form and substance satisfactory to the DIP Lender prior to the purchase of the DIP Notes:

a) A court order approving the DIP Agreement and the first priority charge securing the DIP Notes must be granted on or before January 29, 2015;

b) All application and other materials in connection with the application for participation in the Auction must be in form and substance acceptable to the Purchasers and their legal counsel;

c) Wireless shall be an operating new entrant eligible to participate in the AWS-3 Auction, either directly or through Mobilicity SpectrumCo, with respect to the set-aside AWS-3 spectrum in all areas where Wireless operates;

d) The Applicants must provide a 13-week budget, which the Applicants are required to update upon request of the DIP Lender after the closing date.

20. The DIP Agreement contains various other affirmative covenants, negative covenants, Events of Default and conditions that, in the Monitor's view, are reasonably customary for this type of financing, including the granting of the DIP Lender's Charge.

<u>The DIP Lender's Charge</u>

21. Pursuant to the terms of the DIP Agreement, the Applicants are required to obtain a Court order granting the DIP Lender's Charge in favour of the DIP Lender over all of the assets and

property of the Applicants and Mobilicity SpectrumCo. Upon completion of the financing, the DIP Lender's Charge would be the only charge registered against the property of Mobilicity SpectrumCo.

22. If the Order is granted, the order of priority of the Court-ordered charges would be:

a) First –the DIP Charge;

b) Second – the Liens in favor of the Senior Agent securing the Senior Obligations;

c) Third – the Administrative Charge and the KERP charge on a *pari passu* basis;

d) Fourth – the Director's Charge; and

e) Fifth - the Bridge Notes Security.

23. In reviewing the proposed DIP Facility, the Monitor has carefully considered the facts and circumstances of the Applicants and the factors set out in Section 11.2(4) of the CCAA which provide a non-exhaustive list of factors which this Court is to consider when deciding whether to approve the Applicant's proposed DIP Facility.

24. Pursuant to Section 11.2(4) of the CCAA, the Court is to consider,

a) *the period during which the company is expected to be subject to proceedings under the CCAA.* The discrete use and requirement of the DIP Facility would be to fund the Deposit and pay the associated interest and fees. This would all occur prior to the Proposed Stay Extension Date of May 8, 2015;

b) *how the company's business and financial affairs are to be managed during the proceedings.* The Applicants expect to keep existing senior management in place through the Proposed Stay Extension Date as well as the services of its Chief Restructuring Officer with a view to advancing a value-maximizing transaction that is capable of being implemented and supported by the creditors of the Applicants;

c) *whether the company's management has the confidence of its major creditors.* The Monitor is not aware of any stakeholder requesting that the Applicant's management be replaced;

d) *whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company*. The Applicants, with the assistance of their financial advisors, have considered the incremental value to the business and the potential benefits to all stakeholders in applying to participate in the Auction and believe that it is the most advantageous way to advance a value-maximizing transaction;

e) *the nature and value of the company's property*. The only additional encumbrance against the property or assets of the Applicants, as a result of the Second DIP Loan Agreement, shall be the DIP Lenders' Charge securing the obligations under the Second DIP Loan Agreement;

f) *whether any creditor would be materially prejudiced as a result of the security or charge*. The Monitor is unaware of any secured creditor, who has not been served with the Applicants' motion materials, who is likely to be affected by the DIP Lenders' Charge; and

g) *the monitor's report referred to in paragraph 23(1)(b)* [of the CCAA], *if any*. The Tenth Report discusses the Monitor's views in respect of reasonableness of the Applicants' Cash Flow Statement.

25. The Monitor is of the view that that the proposed DIP facility represents the most favourable course of action available in the circumstances and is satisfied that the criteria enumerated in the CCAA for the granting of the DIP financing has been met.

MONITOR'S CONCLUSIONS AND RECOMMENDATION

26. As set out above, the proposed DIP Facility affords the Applicants the ability and flexibility to participate in the Auction, thus keeping their strategic options open without committing them, at this time, to completing any acquisition of additional spectrum. This, coupled with the proposed extension of the Stay Period, provides the Applicants with additional time to monitor developments in their relevant markets, consult with their stakeholders and advisors and develop their strategy to maximize value for their stakeholders.

27. The proposed DIP Facility provides financing of the required Deposit on terms and pricing that the Applicants, in consultation with their financial advisor, consider to be reasonable and optimal in the circumstances.

28. Based on the Monitor's observation of and involvement in discussions concerning the financing alternatives available to the Applicants at this time, the Monitor concurs with the Applicants' conclusions and intended course of action with respect to the DIP Facility, participation in the AWS-3 Auction and continuing development of their strategy to maximize value for all their stakeholders.

29. Accordingly, the Monitor recommends that this Court approve the relief sought by the Applicants with respect to the DIP Facility and the extension of the Stay Period.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th DAY OF
JANUARY 2015

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:

Brian M. Denega
Senior Vice President