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

FACTUM OF THE APPLICANTS
(Plan Filing and Meeting Order and Stay Extension)

April 22, 2014

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PART I - OVERVIEW

1. The Applicants, 8440522 Canada Inc., Data & Audio-Visual Enterprises Wireless Inc. (**Wireless**), and Data & Audio-Visual Enterprises Holdings Inc. (**Holdings**) (collectively, the **Mobilicity Group**) seek a Plan Filing and Meeting Order substantially in the form attached to the Applicants' Motion Record (the **Meeting Order**) that, among other things:

   (a) authorizes the Applicants to file the Plan and call and conduct a meeting of Affected Unsecured Creditors (each as defined below) on April 30, 2014 to vote on the Plan (the **Meeting**); and

   (b) extends the Stay Period (as such term is defined in Paragraph 15 of the Initial Order, as amended) up to and including June 30, 2014 (the **Fifth Stay Extension**).

2. The relief sought on this Motion is appropriate in the circumstances. As discussed in detail below, the Plan contemplates the completion of the only acceptable transaction available

to the Mobilicity Group, and it enjoys the support of a large number of the Mobilicity Group's creditors, including a large number of the Affected Unsecured Creditors. In such circumstances, it is appropriate for the Court to authorize the filing of the Plan and the Meeting.

3. Once such authorization is granted, the Applicants will require the Fifth Stay Extension to provide additional time to hold the Meeting, bring a motion before the Court to sanction the Plan, and implement the transaction contemplated thereunder.

PART II - THE FACTS

A. Background

4. The relevant facts are set out in the Affidavit of William E. Aziz, sworn April 16, 2014 (the **Aziz Affidavit**), and are summarized below. Capitalized terms used herein and not defined have the meanings ascribed to them in the Aziz Affidavit.

5. The Mobilicity Group carries on business as a Canadian wireless telecommunications carrier, providing cellular service to its customers in five urban markets across Canada.[1]

6. Over the course of the past two years, the Mobilicity Group has experienced significant financial challenges. From late 2012 to September 2013, the Mobilicity Group and its financial advisors pursued all available sale and restructuring alternatives in an effort to find a solution to those challenges. In total, over 40 strategic parties were contacted.[2]

7. Despite its extensive efforts to find a purchaser of its assets or business, the Mobilicity Group was unable to complete a going-forward transaction for the benefit of its stakeholders by the end of September 2013. As its financial challenges continued to mount, the Mobilicity Group filed for creditor protection under the *Companies' Creditors Arrangement Act*, R.S.C.

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[1] Aziz Affidavit at para 6.
[2] Aziz Affidavit at para 10.

1985, c. C-36, as amended (the **CCAA**) and was granted an Initial Order by this Court on September 30, 2013 (the **Initial Order**).[3]

8. Pursuant to the Initial Order, Ernst & Young Inc. was appointed as Monitor of the Mobilicity Group (in such capacity, the **Monitor**).[4]

B. The Mobilicity Group's Corporate and Capital Structure

9. The Mobilicity Group's corporate structure consists of the following entities:

(a) **Holdings**: a private company incorporated under the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B. 16 (**OBCA**) in March 2008. Holdings holds 100% of the shares of Wireless and carries on no active operations.

(b) **Wireless**: the operating entity of the Mobilicity Group. Wireless is a private company which was incorporated under the OBCA in March 2008 and wholly-owned by Holdings. Data & Audio-Visual Enterprises Leasing Inc. was amalgamated with Data & Audio-Visual Enterprises Wireless Inc. to form Wireless on May 15, 2013.

(c) **8440522 Canada Inc. (844)**: a private company incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (**CBCA**) that is wholly-owned by Wireless. 844 has no material assets or liabilities.[5]

10. The Mobilicity Group has issued notes with an aggregate principal amount of approximately $428.25 million. With accrued interest and financing costs, the total amount owed at March 31, 2014 was approximately $568 million as follows:[6]

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[3] Aziz Affidavit at para 7, Exhibit "A".
[4] Aziz Affidavit at para 8.
[5] Aziz Affidavit at para 16.

(a) 9.5% first lien notes issued in a principal amount of $195 million due April 29, 2018 (the **First Lien Notes**). As of March 31, 2014, the total amount of principal and interest owing was approximately $215 million.

(b) $43.25 million of 15.5% second lien notes that became due September 30, 2013 (the **Second Lien Notes**). The Second Lien Notes rank behind the First Lien Notes in right of payment, and security on the Second Lien Notes is subordinate to the First Lien Notes security. As of March 31, 2014, the total amount of principal and interest owing was approximately $47 million.

(c) 15% senior unsecured debentures (the **Unsecured Senior Notes**) in the total principal amount of $95 million due September 25, 2018. As of March 31, 2014, the amount outstanding on the Unsecured Senior Notes (including payment in kind interest) was approximately $170 million.

(d) 12% convertible unsecured notes due September 25, 2018. Initially, convertible notes in the principal amount of $59,741,000 were issued (the **Unsecured Pari Passu Notes**). Subsequently, additional convertible notes in the principal amount of $35,000,000 were issued (the **Unsecured Subordinated Notes,** and collectively with the Unsecured Pari Passu Notes, the **Convertible Notes**). The Unsecured Subordinated Notes rank subordinate in right of payment to the Unsecured Pari Passu Notes and the Unsecured Senior Notes, and the Unsecured Pari Passu Notes rank *pari passu* in right of payment with the Unsecured Senior Notes. As of March 31, 2014, the amount outstanding under the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes

[6] Aziz Affidavit at para 17.

(including payment in kind interest) was approximately $86 million and approximately $50 million, respectively.

11. The Mobilicity Group also has equity investors who have invested approximately $250 million.[7]

12. In addition, the Mobilicity Group entered into a debtor-in-possession note purchase agreement (the **DIP Loan Agreement**) with certain lenders identified therein (the **DIP Lenders**). No amounts have been advanced under the DIP Loan Agreement to date and the availability of funds thereunder remains subject to conditions that have not yet been satisfied.[8]

C. The Sale Process

13. The Mobilicity Group has been engaged in a comprehensive court-supervised sale process (the **Sale Process**) since November 2013. Throughout the Sale Process, the Mobilicity Group, its financial advisor Canaccord Genuity (**Canaccord**) and the Monitor again identified and reached out to all credible interested parties that may be interested in purchasing the assets or business of the Mobilicity Group. The parties contacted include all potential strategic purchasers contacted prior to the Initial Order and all major North American telecommunication industry participants.[9]

14. All bids submitted in the Sale Process were reviewed by the Monitor, the Mobilicity Group and Canaccord.[10]

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[7] Aziz Affidavit at para 18.
[8] Aziz Affidavit at para 19.
[9] Aziz Affidavit at para 9, 11, 20 and 22, Exhibit "B".
[10] Aziz Affidavit at para 23.

15. The Sale Process has now run its course and only one acceptable transaction has emerged: a transaction proposed by TELUS, pursuant to which the Mobilicity Group's business will continue for the benefit of all stakeholders (the **TELUS Transaction**).[11]

16. As discussed in more detail below, the TELUS Transaction also offers significant value to the Mobilicity Group for its assets, and will allow the Mobilicity Group to repay its secured creditors in full and provide a partial recovery to the holders of its unsecured debt, and holders of Restructuring Claims (as defined below), if any.[12]

17. The Monitor, as an independent Court officer with an obligation to act in the best interests of the Mobilicity Group's stakeholders, supports the TELUS Transaction as the most beneficial alternative for those stakeholders, and as the only alternative likely to provide them any meaningful recovery.[13]

D. The Plan

18. The TELUS Transaction is to be implemented through a plan of compromise or arrangement, which is based upon the terms of a term sheet executed by the Mobilicity Group and TELUS dated April 1, 2014 (the **Plan**). The purpose of the Plan is to provide for, among other things:[14]

(a) the continuation of the Mobilicity Group's business as a going concern;

(b) the continuation of existing trade liabilities of the Mobilicity Group, to be dealt with in the normal course of business;

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[11] Aziz Affidavit at para 12.
[12] Aziz Affidavit at para 13.
[13] Aziz Affidavit at para 26.
[14] Aziz Affidavit at para 34.

(c) the repayment in full of the First Lien Notes, Second Lien Notes and of the amounts advanced under the DIP Loan Agreement, if any, and all amounts owing under the Court-ordered charges approved pursuant to Orders issued during these proceedings (the **Court-Ordered Charges**); and

(d) subject to the payment of any transaction fees not otherwise covered by the Court-Ordered Charges, the distribution of remaining proceeds to holders of the Unsecured Senior Notes and Unsecured Pari Passu Notes and holders of any claims that have arisen in these CCAA proceedings as a result of the termination, resiliation, assignment or repudiation by the Mobilicity Group of any contract, lease or other agreement (each a **Restructuring Claim**), if any.

19. In sum, all persons with a remaining economic interest in the Mobilicity Group will derive a greater benefit from the implementation of the Plan than would otherwise result.[15]

20. As set out in the Monitor's Sixth Report, holders of approximately 67% of First Lien Notes, 100% of Second Lien Notes and 95% of Unsecured Senior Notes, as well as the DIP Lenders, have entered into support agreements in respect of the TELUS Transaction.[16]

i. Overview of the Plan and the TELUS Transaction

21. The TELUS Transaction contemplated in the Plan involves the subscription by TELUS or its designee for all post-restructuring shares of Holdings to indirectly acquire Holdings' operating subsidiary, Wireless, on a cash-free and funded debt-free basis for the purchase price of $350 million in cash, subject to certain adjustments provided for in the Plan. In addition, pursuant to

[15] Aziz Affidavit at para 35.
[16] Sixth Report of the Monitor dated April 21, 2014 at para 49.

the TELUS Transaction, TELUS will assume $22 million of net negative working capital subject to certain adjustments provided for in the Plan.[17]

22. On implementation of the Plan:[18]

(a) the claims of holders of First Lien Notes and Second Lien Notes, the DIP Lenders under the DIP Loan Agreement, the beneficiaries under Court-Ordered Charges, and Affected Unsecured Creditors will be fully, finally and irrevocably and forever compromised, released, discharged, cancelled and barred; and

(b) equity claims and the Unsecured Subordinated Notes will be released, discharged and cancelled for no consideration.

23. In addition, the Plan provides for a $71 million holdback, being the full amount that Catalyst Capital Group has claimed is owing under the terms of a claimed "make whole" obligation under the First Lien Notes (the **First Lien Holdback Amount**).[19]

24. The entitlement of holders of First Lien Notes to the First Lien Holdback Amount, or any portion thereof, will be determined or agreed at some point in the future. In the event that it is determined or agreed in accordance with the terms of the Plan that a portion of the First Lien Holdback Amount is not payable to any holder of First Lien Notes, that portion of the First Lien Holdback Amount will be distributed to Affected Unsecured Creditors on a *pro rata* basis under the Plan.[20]

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[17] Aziz Affidavit at para 32.
[18] Aziz Affidavit at paras 36-37.
[19] Aziz Affidavit at para 38.
[20] Aziz Affidavit at para 39.

ii. Releases

25. Article VI of the Plan provides for the release of a number of parties including: (i) the Mobilicity Group, as well as its directors, officers, chief restructuring officer, shareholders and certain other associated parties; (ii) the Monitor and its counsel; (iii) TELUS and its directors, officers and certain other associated parties; and (iv) the trustees under the indentures governing the First Lien Notes and the Unsecured Senior Notes, the collateral agent under the Bridge Notes, the collateral agent for the DIP Lenders, the holders of the First Lien Notes, the Bridge Notes, the Unsecured Senior Notes and the Convertible Notes, and certain associated parties.[21]

iii. Conditions Precedent to Implementation of the Plan

26. The Plan is subject to minimal and customary conditions, set out in Article VII of the Plan, including:[22]

(a) the receipt of approval the Meeting of a majority in number of Affected Unsecured Creditors representing at least two-thirds in value and fifty percent in number of the claims held by such Affected Unsecured Creditors;

(b) approval by the Court; and

(c) the absence of any Material Adverse Effect.

27. The only material condition to the Plan is the receipt of any material regulatory consent required in connection with the TELUS Transaction, which consent can be obtained in any manner which is acceptable to TELUS in its sole discretion.[23]

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[21] The Plan, Article VI, Applicants' Motion Record, Tab 3, Schedule "D".
[22] The Plan, Article VII, Applicants' Motion Record, Tab 3, Schedule "D".
[23] The Plan, s 7.3(o), Applicants' Motion Record, Tab 3, Schedule "D".

E. The Creditors' Meeting

i. The Mobilicity Group's Need to Move Forward with a Meeting at this Time

28. The Mobilicity Group operates at a loss and based upon current cash flow forecasts, will exhaust its remaining liquidity by early July 2014.[24] Moreover, and as discussed above, the Mobilicity Group is unable to access funds under its DIP Loan Agreement, which remains subject to conditions that have not yet been satisfied.[25]

29. Given its significant financial challenges and in view of its current liquidity, the Mobilicity Group must move forward with the Meeting and the implementation of the TELUS Transaction pursuant to the proposed timeline. It is imperative that the Mobilicity Group concludes its restructuring efforts without any additional delays.[26]

ii. Classification of Claims for Voting Purposes

30. The Plan contemplates one voting class of Affected Unsecured Creditors, composed of beneficial holders of the Unsecured Senior Notes and Convertible Notes as at April 15, 2014 (the **Voting Record Date**) and any creditors with Restructuring Claims.[27]

31. The classification proposed in the Meeting Order is identical to the classification approved by the Court on May 28, 2013, in the Applicants' Plan of Arrangement proceedings under the CBCA (the **CBCA Plan**) with the exception of the inclusion of the Restructuring Claims, if any.[28]

32. The Meeting Order does not contemplate a formal claims procedure in connection with the determination of claims for voting purposes at the Meeting. A formal claims procedure is

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[24] Aziz Affidavit at para 42.
[25] Aziz Affidavit at para 19.
[26] Aziz Affidavit at paras 14 and 44.
[27] Aziz Affidavit at para 46.
[28] Aziz Affidavit at para 48.

unnecessary in circumstances where the claims of Affected Unsecured Creditors for voting purposes will, in the case of claims under the Unsecured Senior Notes, be determined by the records of the applicable Holders of Record, in the case of Convertible Notes, be determined in accordance with the books and records of the Applicants and, in the case of any Restructuring Claims that may exist, be determined by the Monitor based upon the contractual entitlements of the party whose agreement has been terminated, resiliated, assigned or repudiated. No claims process was required by the Court for the vote that occurred in respect of the CBCA Plan.[29]

iii. Overview of the Meeting Order

33. The Applicants are seeking authorization to call and hold a meeting of Affected Unsecured Creditors (as defined above, the Meeting) on April 30, 2014 to vote in respect of the Plan.[30]

34. By way of a general overview, the Meeting Order provides for:[31]

(a) delivery of the meeting materials, including the Notice of Meeting, a form of proxy to be used by holders of the Convertible Notes and any Restructuring Claims, a form of proxy to be used by beneficial holders of Unsecured Senior Notes, and copies of the Sixth Report of the Monitor, the Plan and the Meeting Order (collectively, the **Meeting Materials**);

(b) identification of who is, and who is not, entitled to attend and vote at the Meeting;

(c) issuance of a press release announcing the issuance of the Meeting Order and inviting the Affected Unsecured Creditors to obtain the relevant materials from the Monitor's Website; and

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[29] Aziz Affidavit at para 67.
[30] Aziz Affidavit at para 49.
[31] Aziz Affidavit at paras 52-54.

(d) voting procedures and conduct of the Meeting.

35. More specifically, the Meeting Order contains, among others, the following provisions:[32]

(a) the Voting Record Date for the purpose of the Meeting is April 15, 2014;

(b) all proxies submitted in respect of the Meeting (or any adjournment thereof) must be submitted to the Monitor on or before 5:00 p.m. (Toronto time) on the second Business Day before the Meeting; and

(c) the only Persons entitled to vote at the Meeting in person or by proxy are: (i) the Beneficial Noteholders at the Voting Record Date (or any such validly appointed holder of the Beneficial Noteholder's proxy); (ii) registered holders of Unsecured Pari Passu Notes and Unsecured Subordinated Notes as at the Voting Record Date; and (iii) any holders of Restructuring Claims ((i), (ii) and (iii) collectively, the **Affected Unsecured Creditors**).

36. The Monitor and the Mobilicity Group have taken proactive steps to provide advance notice of the Meeting and Meeting Materials prior to the hearing for the Meeting Order:

(a) on April 16, 2014, the Monitor caused a notice to be sent to CDS for delivery to the CDS participants, and to the other Holders of Records of the Unsecured Senior Notes advising that materials in respect of the Meeting would soon become available;[33] and

(b) concurrently with the service of the Applicants' motion record, the Mobilicity Group issued a press release announcing the service of the motion record and

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[32] All capitalized terms used in this section and not otherwise defined are as defined in the Meeting Order.
[33] Aziz Affidavit at para 60, Exhibit "D". A copy of the draft Meeting Order can be found at Tab 3 of the Applicants' Motion Record.

advising of the posting of the motion record, including the Meeting Materials, on the Monitor's Website.[34]

37. These steps, together with those contemplated by the Meeting Order, have and will provide sufficient time for Affected Unsecured Creditors to consider and vote on the Plan.[35]

PART III - ISSUES AND THE LAW

A. It Is Appropriate to Permit the Applicants to File the Plan and Call the Meeting

38. This Court is authorized to order the Meeting pursuant to sections 4 and 5 of the CCAA:

> Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.[36]
>
> Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.[37]

39. As set out by the Court of Appeal for Ontario in *Elan Corp. v. Comiskey (Trustee of)*,[38] the threshold test to file a plan and call a meeting of creditors to vote on that plan is low:

> ... I agree that the feasibility of the plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors: S.E. Edwards, "Reorganizations Under the

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[34] Aziz Affidavit at para 61.
[35] Aziz Affidavit at para 62.
[36] CCAA, s 4.
[37] CCAA, s. 5
[38] [1990] OJ No 2180 (CA) (***Comiskey***).

> Companies' Creditors Arrangement Act," a pp. 594-595. **I would not, however, impose a heavy burden on the debtor company to establish the likelihood of ultimate success from the outset.**[39] [Emphasis added]

40. The filing of the Plan and the calling of the Meeting should be authorized unless it is obvious that the Plan is "doomed to failure" in the sense that it would not be approved by the Affected Unsecured Creditors.[40]

41. The Mobilicity Group has met and exceeded this low threshold. The terms of the Meeting Order are both fair and reasonable in the circumstances, and there is widespread support for the Plan and the TELUS Transaction amongst the Mobilicity Group's affected stakeholders.

42. There is no indication that the Plan is "doomed to fail". As a result, this Court should enter the Meeting Order and allow the Applicants to proceed with the next phase of their restructuring process.

i. The Classification of Creditors is Appropriate

43. The classification of creditors into a single class of Affected Unsecured Creditors for voting purposes is appropriate and consistent with section 22 of the CCAA. Subsection 22(1) reads:

> A debtor company divide its creditors into classes for the purposes of a meeting to be held under section 4 of 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.[41]

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[39] *Comiskey* at para 88.
[40] *ScoZinc Ltd (Re)*, 2009 NSSC 163 at paras 4-7.
[41] CCAA, s 22(1).

44. The classification of creditors under a plan must take into account the underlying purpose of the CCAA, being to facilitate successful restructurings. Courts have recognized that a fragmentation of classes would render it extremely difficult to obtain approval of a plan and would accordingly be contrary to the CCAA's objectives.[42] The classification contemplated by the Plan was structured with this in mind.

45. Subsection 22(2) of the CCAA provides all that creditors with a "commonality of interest" may be included in the same class.[43] This provision has been interpreted to mean that a class should be comprised of all those whose legal rights in relation to the debtor company are not so dissimilar as to make it impossible to consult together with a view to their common interest, but that the classification should not be so fine that it renders approval of the plan impossible.[44]

46. The factors to be considered in determining whether creditors have a "commonality of interest" have been codified in subsection 22(2) of the CCAA:

> (a) the nature of the debts, liabilities or obligations giving rise to their claims;
>
> (b) the nature and rank of any security in respect of their claims;
>
> (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
>
> (d) Any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.[45]

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[42] *Sklar-Peppler Fumiture Corp v Bank of Nova Scotia* (1992), 8 CBR (3d) 312 at para 13 (Ont Gen Div) (***Sklar-Peppler Furniture***).
[43] CCAA, s 22(2).
[44] *Sklar-Peppler Fumiture* at para 14.
[45] CCAA, s 22(2).

47. Having regard to the factors enumerated in subsection 22(2) of the CCAA, it is clear that classifying the Affected Unsecured Creditors in one voting class is appropriate for the following reasons:

(a) the unsecured nature of the debts is common to all members of the class;

(b) the Restructuring Claims, if any, and the claims under the Unsecured Senior Notes and the Unsecured Pari Passu Notes rank *pari passu* in a liquidation of the Mobilicity Group on a consolidated basis;

(c) the Unsecured Subordinated Notes rank subordinate to the Unsecured Senior Notes, the Unsecured Pari Passu Notes and any Restructuring Claims, all of which will be partially compromised under the Plan;[46]

(d) if the Unsecured Subordinated Notes did not vote with the other Affected Unsecured Creditors in a single class, the Unsecured Subordinated Notes would effectively have a veto on the Plan notwithstanding that the results of the Sale Process indicate that the holders of the Unsecured Subordinated Notes have no economic interest in the assets of the Mobilicity Group at this time;

(e) in absence of approval of the Plan, each of the Unsecured Affected Creditors would have the sole remedy of seeking to enforce its unsecured right to payment; and

[46] It should be noted that Restructuring Claims, if any, are not to be compromised under the Plan without prior approval of the Monitor and the Mobilicity Group's Chief Restructuring Officer (**CRO**). If the consent of the Monitor and/or the CRO is not given, such Restructuring Claim will constitute an Unaffected Restructuring Claim and therefore an Unaffected Claim under the Plan, which means that it will be paid in full prior to any distribution to the Unsecured Senior Noteholders and Unsecured Pari Passu Noteholders. This scheme of distribution respects the priority of Unaffected Restructuring Claims vis-à-vis other claims against the Applicants that receive distributions or are being compromised under the Plan.

(f) the vast majority of the Affected Unsecured Creditors have largely already been consulted in respect of the Plan, either directly or through active participation of their counsel throughout these proceedings, and, as set out above, the majority of those creditors have entered into support agreements in connection with the Plan.[47]

48. As the Mobilicity Group has met the threshold test as out in *Comiskey* and has appropriately classified its creditors for voting purposes, the Court should authorize the filing of the Plan and the calling of the Meeting.

ii. Holders of Equity Claims Should Not Be Permitted to Vote

49. Consistent with section 22.1 of the CCAA, holders of equity claims are not permitted to vote on the Plan. Section 22.1 prohibits the holders of equity claims from voting on a plan unless a court orders otherwise:

> Despite subsection 22(1), creditors having equity claims are to be in the same class of creditors in relation to those claims unless the courts orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.[48]

50. The Meeting Order excludes holders of equity claims from the class of parties entitled to vote on the Plan.

> Where a company is insolvent, only the creditors maintain a meaningful stake in its assets ... Shareholders cannot reasonably expect to maintain a financial interest in an insolvent company where creditors' claims are not being paid in full.[49]

51. In the current circumstances, there is no reason for the Court to depart from the general rule that holders of equity claims should not vote on the Plan. The Sale Process clearly

[47] Aziz Affidavit at para 47.
[48] CCAA, s 22.1.
[49] *Canadian Airlines Corp.*, 2000 ABQB 442 at para 143.

demonstrated that equity claimholders have no economic interest in the Plan, and no distribution can be made to them since the claims of Affected Unsecured Creditors are being compromised pursuant to the Plan.[50]

B. It Is Appropriate To Extend the Stay of Proceedings

52. The Applicants request an extension of the stay of proceedings up to and including June 30, 2014 (as defined above, the Fifth Stay Extension) to provide additional time to hold the Meeting, bring a motion before the Court to sanction the Plan, and implement the transaction contemplated thereunder.[51]

53. Subsection 11.02(2) of the CCAA authorizes a court to make an order, other than on an initial application, staying all proceedings in respect of a debtor company for any period of time necessary.[52]

54. In *Canwest Global Communications Corp. (Re)*,[53] Justice Pepall noted that a stay of proceedings should be extended where:

(a) forecasts indicated that the debtors had sufficient cashflow resources to operate through the requested extended stay period;

(b) the monitor supported the stay extension;

(c) there was a lack of opposition to the motion; and

(d) the debtors had acted and were continuing to act in good faith and with due diligence.[54]

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[50] Subsection 6(8) of the CCAA prohibits the sanction of a plan that provides for the payment of an equity claim unless all claims that are not equity claims are to be paid in full before the equity claim is to be paid.
[51] Aziz Affidavit at para 70.
[52] CCAA, s 11.02(2).
[53] [2009] OJ No 4788 (SCJ) (***Canwest***).

55. The Applicants have satisfied these criteria:

(a) the Updated Cash Flow Statement submitted as an appendix to the Monitor's Sixth Report indicates that the Applicants have sufficient cash resources to continue operations through the requested extended Stay Period;[55]

(b) the Monitor, as well as the Ad Hoc Committee of Noteholders, the DIP Lenders, the Bridge Lenders and QCP CW S.A.R.L. all support the Fifth Stay Extension.[56]

(c) the Applicants are unaware of any opposition to the Fifth Stay Extension; and

(d) the Applicants have been working in good faith and with due diligence since the last extension of the Stay Period to advance the transaction contemplated by the Plan, including negotiating final transaction documents with TELUS and engaging with Industry Canada to request a preliminary assessment of the deemed transfer of the Mobilicity Group's spectrum licences.

56. In all of the circumstances, it would be appropriate to extend the Stay Period until June 30, 2014.

PART IV - ORDER REQUESTED

57. For the reasons set out above, the Applicants request an Order substantially in the form of the draft Order attached at Tab 3 of the Applicants' Motion Record.

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[54] *Canwest* at para 43.
[55] Aziz Affidavit at paras 72-73.
[56] Aziz Affidavit at para 74.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22 day of April, 2014.

For: Norton Rose Fulbright Canada LLP

Lawyers for the Applicants
Data & Audio-Visual Enterprises Wireless Inc.,
Data Audio-Visual Enterprises Holdings Inc. and
8440522 Canada Inc.

SCHEDULE "A"
LIST OF AUTHORITIES

1 *Canadian Airlines Corp*, 2000 ABQB 442.

2 *Canwest Global Communications Corp (Re),* [2009] OJ No 4788 (SCJ).

3 *Elan Corp v Comiskey (Trustee of),* [1990] OJ No 2180 (CA).

4 *ScoZinc Ltd (Re)*, 2009 NSSC 163.

5 *Sklar-Peppler Furniture Corp v Bank of Nova Scotia* (1991), 8 CBR (3d) 312 (Ont Gen Div).

SCHEDULE "B"
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.**

Compromise with unsecured creditors

4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromise with secured creditors

5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

...

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

...

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(a) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(b) whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

...

Company may establish classes

22. (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

...

Class — creditors having equity claims

22.1 Despite subsection 22(1), creditors having equity claims are to be in the same class of creditors in relation to those claims unless the court orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.

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

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

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

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