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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

REPLY AFFIDAVIT OF JAMES RILEY
(Sworn October 19, 2013)

I, JAMES RILEY, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Chief Operating Officer, Managing Director and Partner in The Catalyst Capital Group Inc. ("**Catalyst**") and have been directly involved in these proceedings, as well as in the oppression proceedings instituted by Catalyst and the proceedings initiated by the Mobilicity Group [1] under the *Canada Business Corporations Act*, R.S.C., 1985 c. C-44 ("**CBCA**"). As such, I have personal knowledge of the matters hereinafter deposed to, except when otherwise stated in which case I have identified the source of my information and belief.

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[1] In this affidavit "Opco" refers to Data & Audio-Visual Enterprises Wireless Inc., the corporate entity which owns and utilizes spectrum and carries on active business with its wireless customers and suppliers. "Holdco" refers to Data & Audio-Visual Enterprises Holdings Inc., the corporate entity which is Opco's parent, and whose sole asset (other than certain tax losses) is its 100% equity interest in Opco.

2. This affidavit is sworn in reply to the Affidavit of William Aziz ("**Aziz**"), dated October 16, 2013 (the "**Responding Affidavit**").

STAY EXTENSION

(a) Aziz's Description of Events Since September 30, 2013

3. In paragraphs 7-28 of his Responding Affidavit, Aziz makes reference to the activities and business operations of the Mobilicity Group since the Initial Order herein dated September 30, 2013, and summarizes why a continuation of the stay granted at that time is being sought.

4. Catalyst supports any and all reasonable and responsible efforts to sell Opco's business so as to generate funds to meet Opco's obligations, provided the rights and interests of unconflicted First Lien Note Holders are fully protected. For that reason, Catalyst supports a continuation of the stay as requested by the Applicants.[2]

5. In the above paragraphs, Aziz describes various steps taken with third parties and suppliers, with the apparent purpose of maintaining Opco's business activities. Aziz further asserts that since the commencement of the CBCA proceedings, "the subscriber base of the Mobilicity Group has remained relatively stable", and that steps have been taken "...with a view to attract new customers and upgrade existing customers".

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[2] As described in my prior affidavit, a large number of First Lien Note Holders also hold debt at the Holdco level. These stakeholders have economic interests which conflict with the interests of the First Lien Note Holders who do not hold debt at the Holdco level. As in my prior affidavit, the First Lien Note Holders with these conflicting interests are referred to herein as the "**Conflicted First Lien Holders**". In para 34 below, I make reference to a chart which depicts, to the best of Catalyst's knowledge and belief, the identity of these Conflicted First Lien Holders and other stakeholders, as well as the quantum of their interests.

6. To be clear, the "Mobilicity Group" does not have a subscriber base. As indicated in my prior affidavit herein, Opco is the corporate entity that conducts the wireless business and it is Opco that owns the spectrum and has subscribers. In the result, other than tax losses at Holdco whose quantum and value is unclear, Opco owns all of the material assets that could be the subject of any potential sale transaction.

7. In these proceedings the Applicants have emphasized the importance of Opco's customer base and the need to ensure stability in order to maintain and expand that base. While the spectrum is and will continue to be Opco's most valuable asset, the existence of a subscriber base also has value for the purpose of any potential sale transaction. In this context, the more active subscribers exist at Opco, the more valuable Opco's business would be in any potential sale.

8. Based upon affidavits, financial statements, and quarterly reports, which have been issued by the Mobilicity Group, the number of subscribers at Opco over the last 12 months can be summarized as follows:[3]

December 31, 2012	271,337
March 31, 2013	254,457
June 30, 2013	235,422
September 29, 2013	194,000
October 31, 2013 (est.)	180,000

3 The figures with respect to the Mobilicity Group's subscribers can be found in several places in the record but are most conveniently grouped at page 6 of the MD&A contained within Exhibit "B" to my supplemental affidavit sworn September 25, 2013 in the CCAA proceedings commenced by Catalyst.

9. Based upon the above numbers, I cannot understand how Aziz can say that Opco's customer base is stable. In fact, Opco lost subscribers at a rate of 5,626 subscribers per month between December 31, 2012 and March 31, 2013, 6,345 subscribers per month between March 31, 2013 and June 30, 2013, and 13,807 subscribers per month between June 30, 2013 and September 29, 2013. Aziz's estimate for the month of October suggests that the attrition of approximately 14,000 subscribers a month is continuing. At this rate, Opco will have approximately 152,000 subscribers at December 31, 2013 and approximately 124,000 subscribers by the end of February 2014.

10. Catalyst is very concerned that the continuing and accelerating decrease in Opco's customer base has had and will continue to have a material adverse effect on the value of its business, and hence, the proceeds that might be realized in any sale of Opco's business.

11. In his Responding Affidavit, Aziz does not address Catalyst's belief and concern that there has been a material change in Opco's cash expenditures and forecasts before and after June 30, 2013, and that this has adversely impacted the company's customer base. Rather, Aziz simply asserts that "...the Applicants have operated within the cash flow forecast (as previously filed with the Court in my Initial Order Affidavit...").

12. Consistent with the continuing loss of subscribers referred to above, these cash flows show declining revenues over the period. Opco appears to be caught in a vicious circle. Its diminishing customer base results in declining revenues. Without the cash required to maintain and improve service, conduct promotions, or undertake appropriate marketing efforts, its business appears to be deteriorating further. Opco's ever diminishing customer base creates even

more adverse pressure on revenues and the downward spiral continues. In these circumstances, I am not at all certain that the minimal DIP funding contemplated by the cash flows referred to by Aziz is adequate to maintain the value of Opco pending attempts to sell the business.

13. Aziz also states that "...the Applicants have already approached some suppliers about adapting their service offerings to the levels that the Applicants now require..." (underlining added). This suggests that even more service reductions are contemplated.

14. The foregoing accentuates the concerns which I have previously expressed that the reduction in weekly expenditures by Opco since June 30, 2013, (which presumably formed part of the projection referred to in the Mobilicity Group's June 30, 2013 financials), has resulted in a material reduction in support and maintenance of the customer base and has contributed to the accelerating decline in the company's subscriber base. As noted above, this trend is reflected in the deteriorating revenue contemplated in the cash flow projections which Aziz refers to in his Responding Affidavit. In my view this has had, and will inevitably continue to have, a negative impact on Opco's value.

15. The Mobilicity Group has ready access to detailed weekly cash flow projections and actual results available from and after (at least) February 6, 2013 to date: these materials were required to be prepared and provided to the Conflicted First Lien Holders pursuant to Articles 11.1(m), 11.2(b), 11.3(b), and 13(f)(i) of the Note Purchase Agreement. Catalyst has repeatedly attempted to obtain this information from the Mobilicity Group since early February. Its requests have been denied.

16. The foregoing documentation would help Catalyst (and the Court) understand the magnitude of the changes which have apparently been implemented to reduce Opco's ongoing expenditures, better assess the effects of such changes on Opco's subscriber base, and consider recommendations (including increased DIP funding) it might make to preserve Opco's value.[4] Unfortunately Catalyst has been shut out by the Mobilicity Group from having any such involvement.

(b) The "Proposed Transaction"

17. As previously described, the spectrum purchased by Opco in 2008 constitutes its most valuable asset. Aziz's Responding Affidavit suggests that this spectrum may be sold in a "Proposed Transaction".

18. Catalyst's information about the "Proposed Transaction" is primarily derived from Aziz's prior affidavits.

19. Based upon my reading of said materials, it is my belief that presently no offer has been made by any third party. Rather, it appears to me that the "Proposed Transaction" is a hoped for transaction which has been proposed by the Mobilicity Group, as opposed to a term sheet presented by any third party, let alone any agreement for a tangible transaction resulting from arm's length negotiations with any such third party.

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4 Catalyst has had extensive experience in the successful restructuring of insolvent companies and in enhancing stakeholder value. I believe this experience would be useful to the Mobilicity Group.

20. Unlike the Conflicted First Lien Holders,[5] Catalyst has been given no information about the "Proposed Transaction".

21. As in the case of the cash flow data, Catalyst has attempted to find out more about the "Proposed Transaction" through delivery of Requests to Inspect pursuant to the *Rules of Civil Procedure*. These Requests to Inspect were dated September 26, 2013 (in relation to the term sheet referred to in Aziz's September 25, 2013 affidavit), and October 11, 2013 (in relation to, *inter alia*, sale transaction documents referred to in Aziz's September 29, 2013 affidavit). To date, the Mobilicity Group has refused to provide the documentation relating to the "Proposed Transaction" or any other "expressions of interest" referred to in Aziz's affidavits. Now shown to me and marked as **Exhibit "A"** are the communications which demonstrate these efforts and the Mobilicity Group's refusal to provide the documentation.

22. The second source of Catalyst's information about the Mobilicity Group's "Proposed Transaction" has been from press reports, some of which were attached as Exhibit "V" to my affidavit sworn October 9, 2013. These materials reflect the fact that the media has reported that Telus is the prospective purchaser in the "Proposed Transaction".

23. I stand by my belief that it is highly unlikely that Industry Canada will approve any transaction involving a sale of Opco's 2008 spectrum to Telus or any other incumbent. While the Government has issued public statements indicating that it will review any proposed transaction on a case by case basis, since June 4, 2013 (the date of Industry Canada's decision to

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[5] Pursuant to Article 13(f)(ii) of the Note Purchase Agreement referred to in the prior affidavits ("**NPA**"), the Mobilicity Group is obligated to provide the Conflicted First Lien Holders with weekly updates about the status of any sale transactions.

deny approval of the Mobilicity Group's original transaction with Telus), the Government of Canada has made spectrum transfer rules even more restrictive, and has issued additional statements reiterating its concern about and its policy against transfer of spectrum assets that will result in increased concentration of such assets with incumbent wireless providers. Now show to me and marked as **Exhibit "B"** are true copies of Government Press Releases and policy announcements reflecting this.

24. If it is true that Telus is the potential purchaser in the "Proposed Transaction", it is also appropriate to note that Telus itself has recognized the adverse impact of the spectrum transfer rules announced by the Government of Canada on June 28, 2013. In this regard, Telus commenced an Application for Judicial Review in the Federal Court of Canada. Now shown to me and marked as **"Exhibit C"** is a true copy of Telus' originating application. In it, Telus alleges and relies upon the adverse impact of the Government's new spectrum transfer rules upon the marketability of spectrum.

25. The Application referred to above is part of an aggressive approach taken by Telus in its dealings with the Federal Government. Recent media reports also indicate that Telus' approach has included the institution of further legal proceedings against the Federal Government and has participated in an aggressive public relations campaign designed to influence and change the Government's policies in the wireless sector.

26. It is impossible to be certain whether Telus' activities as summarized above will help or hurt any attempts by Telus to obtain governmental approval for the acquisition of spectrum from Opco. Catalyst believes that the Government is highly committed to its existing policy, and that

recent events and announcements have created a more negative climate for any Telus transaction with the Mobilicity Group than existed last May. In my view there is a very substantial risk that any sale of Opco to Telus will never be approved.

27. It is evident, based upon a more careful review of the currently approved DIP provisions than was possible on September 30, 2013, that the DIP lenders also have concerns about the likelihood of any sale transaction. These concerns are reflected in the conditions which are contained in paragraphs 11.2(h) and 13(f) of the DIP Loan Agreement that was approved on an urgent basis by the Court on September 30, 2009. Now shown to me and marked as **Exhibit "D"** is a true copy of said provisions.

28. Given the ongoing deterioration in Opco's customer base and revenues, the uncertainties surrounding any Government approval for the transfer of spectrum to incumbent wireless providers like Telus, and the limited number of alternative potential bidders for Opco, I do not understand how Aziz could assert that "the Mobilicity Group has no information to suggest that its assets, and in particular its spectrum business, are deteriorating in value", and I disagree with this conclusion.

29. In Catalyst's opinion, the value of Opco, and consequently, the value of its security held in relation to the First Lien Notes, is very much at risk. That is why Catalyst (through the Affidavit of Gabriel De Alba, quoted at paragraph 38 of the Responding Affidavit) expressed concern about potential priming loans ranking ahead of the security for the First Lien Notes. No doubt these same concerns are what caused the Conflicted First Lien Holders (referred to by

Aziz as the Ad Hoc Committee) to object to any such priming loan, as was also described in paragraph 38 of the Responding Affidavit.

THE MOBILICITY GROUP'S OPPOSITION TO THE RELIEF SOUGHT BY CATALYST

30. The Responding Affidavit sets out the Mobilicity Group's position opposing the creation of an Opco Creditor Committee and its conclusion that the relief sought by Catalyst for a fair competition to achieve the best possible DIP financing is a "distraction".

(a) Opco Creditor Committee

31. Aziz implies that the Opco Creditor Committee sought by Catalyst would have inappropriate governance powers and that it would exercise undue control over Opco and/or the Mobilicity Group. I have difficulty reconciling these concerns with the degree of control that the Mobilicity Group has already ceded to the Conflicted First Lien Holders and to the current DIP lenders. Regardless, in seeking the creation of an Opco Creditor Committee, Catalyst does not have the inappropriate intentions assumed by Aziz.

32. On Tuesday, October 15, 2013, Jon Levin of Fasken Martineau DuMoulin LLP and I had an informal meeting with the Monitor and its counsel to discuss the relief sought by Catalyst on this Comeback Motion, including the possible establishment of the proposed Opco Creditor Committee that would be composed of a representative group of Opco creditors and that would be available to be consulted during the restructuring process. Catalyst envisions that such a committee could act as a helpful resource and sounding board with a view to facilitating a successful restructuring. This was a constructive meeting. Catalyst intends to have further

dialogue with the Monitor about the creation of an Opco Creditor Committee, with a view to presenting reasonable and appropriate terms of reference for, and a suggested composition of, such a committee prior to the return of its Comeback Motion.[6]

33. Aziz and the Mobilicity Group also reject the need for any Opco Creditor Committee on the basis that "[Aziz does] not believe that the Wireless Creditors have any unique interest that need to be protected by a committee in the current circumstances".

34. Aziz's conclusion ignores the structural conflicts between Opco and Holdco as set out in my prior affidavit, as well as the fundamentally different (and competing) financial interests of the Conflicted First Lien Holders referred to therein. To put the latter conflict in perspective, Catalyst has prepared a chart which represents, to the best of Catalyst's knowledge and ability, a summary of the financial interests held by the stakeholders at Opco and Holdco. Now shown to me and marked as **Exhibit "E"** is a true copy of this Chart. As appears from the Chart, many of the First Lien Holders (and, Catalyst believes, all of the members of the "Ad Hoc Committee") hold significant debt at the Holdco level which is, for all intents and purposes, unsecured and valueless.

35. Aziz's conclusion also ignores the fact that for the last 6 months, and continuing, notwithstanding its ownership of over $60 million of Opco First Lien Notes, Catalyst has been denied material information about the affairs of Opco and has been excluded from any discussions or involvement in the solutions available to deal with Opco's problems. By contrast, the group of Conflicted First Lien Holders with materially different financial interests have been

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6 Catalyst intends to include conflict of interest provisions applicable to all potential members of such a committee in such terms of reference.

effectively granted control of the process, and have also been provided with continuing and detailed insight into all of Opco's affairs, on a regular and detailed basis. This has given this group of stakeholders a very significant advantage over any unconflicted First Lien Note Holders (such as Catalyst).

36. Catalyst has set out its concerns about the February Financing and the conduct of the Conflicted First Lien Holders in prior filings with the Court, and I do not intend to repeat them. It is noteworthy to observe, however, that the material recently filed by the Mobilicity Group now shows that the Mobilicity Group had bound itself to initiate CBCA proceedings within 6 days of the announcement of the February Financing. Pursuant to the NPA, the Mobilicity Group was contractually required to include, as part of that restructuring, provisions that allowed the Conflicted First Lien Holders to convert tens of millions of their worthless Holdco debt into debt secured by Opco's assets in the form of Second Secured Notes falling due on May 31, 2013.

37. As in the case of the $8.25 million "Bridge Financing Fee" which was immediately payable and deemed to be fully earned on the first tranche of $15 million financing provided for in the NPA, the payment of substantial fees through the conversion of valueless Holdco debt to secured Opco debt was not disclosed in the press release issued at that time. This benefit is just one more example of the Conflicted First Lien Holders' efforts to obtain advantages for themselves, with the concurrence of the Mobilicity Group, in a manner which contravened the First Lien Note Trust Indenture. It also represents another instance of incomplete and inaccurate disclosure regarding the steps that the Mobilicity Group has taken to restructure its affairs.

38. This lack of disclosure is a small part of the current imbalance that exists whereby the Conflicted First Lien Holders have had access to ongoing detailed information about the affairs of Opco and the restructuring that is being attempted. This imbalance is aggravated by the continuation of the effective veto of the Conflicted First Lien Holders of any other financing options, and over any restructuring transactions.

39. The Opco Creditor Committee is intended to provide some redress to the above situation. I believe its creation would help reduce the acrimony that has arisen and would be a benefit to all concerned.

(b) DIP Loan Process

40. Aziz and the Mobilicity Group also oppose the relief sought by Catalyst with respect to a new DIP loan. I do not understand the reason for this position; as outlined below, Catalyst proposes a simple and expeditious procedure which would provide the Mobilicity Group with an opportunity to obtain a more flexible DIP loan on better financial terms.

41. Under cover of Catalyst's counsel's letter to the Monitor, dated October 9, 2013, Catalyst outlined the terms of a DIP loan facility which it was prepared to offer. Catalyst requested at that time that the Monitor not provide those terms to the Mobilicity Group, because of the provisions in the DIP Note Purchase and Guarantee Agreement which require immediate disclosure of same to the current DIP lenders. In Catalyst's view, such disclosure would have been inconsistent with a fair and level playing field and would have impaired the process sought by Catalyst to enable consideration of alternative DIP financing.

42. Now shown to me and marked as **Exhibit "F"** is a further letter that has been written to the Monitor about this issue. As appears from this letter, despite the foregoing concerns, Catalyst intends to deliver its proposed DIP financing to the Mobilicity Group. As noted in this letter Catalyst has outlined a suggested DIP solicitation process for the Monitor's consideration. If this process were to be implemented, Catalyst reserves the right to submit a modified DIP financing proposal, on potentially more attractive terms, as part of the process suggested in its correspondence.

43. The process described in this correspondence is meant to be efficient, simple and straightforward. The purpose is to allow the Monitor to review any proposals that are received and to report to the Mobilicity Group expeditiously (i.e. before the first draw contemplated in the cash flow forecast). In my view this does not create any "distraction": rather, it would create an opportunity for any party wishing to offer DIP financing to do so in accordance with a fair process, substantially different than the skewed procedure followed to date, in which all of the informational and other advantages were in favour of the Conflicted First Lien Holders. As noted above, the beneficiary would be the Mobilicity Group.

44. Catalyst disagrees with the statements contained in the Responding Affidavit that the Mobilicity Group has conducted a fair or thorough process to seek financing options.

45. In my view the "process" followed by the Mobilicity Group was fundamentally flawed. This "process" only favoured the Conflicted First Lien Holders. These parties had significant informational advantages by reason of the detailed information provided to them about Mobilicity's financial and business affairs. In addition, the Conflicted First Lien Holders also

were provided with the details of any conventional or DIP financing proposed by any other party, had an effective veto over any such financing proposals and a preferential opportunity to match such proposals if they chose to do so.

46. Catalyst's particular experience confirms my opinion that the process has not been fair and thorough, for the following reasons:

(a) in February 2013, the Mobilicity Board of Directors was advised that there was no need for any fiduciary out provisions in the financing then being considered because there was no other lender willing to consider bridge financing;

(b) in fact, emails between counsel at that time indicated that Catalyst was prepared to consider bridge financing;

(c) however, Catalyst was not advised of the change in circumstances which the Mobilicity Group says resulted in a need for a different form of financing at that time and was not given an opportunity to provide such financing;

(d) it is my understanding that, based upon the information referred to in subparagraph (a) above, Mobilicity Group's Board of Directors agreed to provisions which did not include any fiduciary out and which provided the Conflicted First Lien Holders with an effective veto over any alternative financing proposals;

(e) immediately after the Government's rejection of the Telus transaction Catalyst offered both conventional and DIP financing to the Mobilicity Group on highly advantageous terms, which included a resolution of Catalyst's oppression claims;

(f) the Mobilicity Group did not accept Catalyst's invitation to discuss its proposals; and

(g) Catalyst was also not advised that its proposed financing of $100 million was more than required.[7]

47. I further understand that, up until at least the end of August (and, possibly, throughout), the Mobilicity Group never entered into any discussions with any other perspective DIP lenders who, according to Mobilicity Group, had offered to provide DIP financing.

48. In light of the above, it is my opinion that the "process" followed was neither complete nor fair and was not in keeping with the care and attention required by the principles set out in *Soundair* and related authorities.

(c) Additional Components of the Responding Affidavit

49. Aziz also asserts in his Responding Affidavit that certain statements in my October 9th affidavit were inaccurate. The reasons for this assertion are set out in subparagraphs 69(a)-(e) of the Responding Affidavit.

50. I disagree with Aziz's conclusions.

51. In paragraph 69(a) of his Responding Affidavit, Aziz takes issue with the contents of Exhibit "C" to my prior affidavit. That Exhibit sets out a summary of the transactions, values,

[7] This level of financing was consistent with the $75 million recapitalization plan being advanced by the Mobilicity Group at the time (this plan stipulated that additional financing would be required by the Mobilicity Group before the end of 2013).

and obligations which would exist in the event of a sale of Opco's business, which is the course of action proposed to be followed in these CCAA proceedings.

52. The calculation of Opco's obligations in the context of such a sale transaction are substantially different than the snapshot recital of liabilities referred to by Aziz.

53. In particular, in a scenario involving a sale of Opco as currently being pursued by the Mobilicity Group, the obligations at the Opco level would include the Make Whole (Catalyst also believes that the Make Whole premium is currently due and owing).

54. Opco's liabilities upon such a sale also include trade and unsecured obligations which are substantially in excess of the $18 million figure referred to in paragraph 69(a) of Aziz's Responding Affidavit. Specifically, the $80.5 million figure attributed to the obligations consequent upon a sale transaction is based upon a combination of the following:

(a) a discounted and reduced estimate of the Mobilicity Group's accounts payable and accrued liabilities ($28,512,669 according to the Mobilicity Group's consolidated balance sheet as at July 31, 2013). This component was estimated to be $15 million;

(b) 50% of Opco's operating lease commitments as set forth in notes 6 and 16 to the Mobilicity Group's December 31, 2012 financial statements, based on a 10% discount and calculated to be $22,300,000;

(c) 50% of the net present value of Opco's service support commitments as set forth in said notes 6 and 16, based on a 10% discount and calculated to be $43,200,000.

55. I believe the above figures represent conservative estimates. Moreover, the above components do not include other relevant liabilities such as the cost of the CCAA proceedings and KERP obligations. With additional information, the obligations payable at Opco could be further refined.

56. The foregoing components were used to arrive at the estimate of $80.5 million of Opco obligations which would have to be paid or assumed in any sale transaction, as set out in Exhibit "C" to my prior affidavit. Aziz's analysis and assertions do not include these components. In the result, I confirm the estimates contained in Exhibit "C" in my prior affidavit and the conclusions reflected therein. From a practical and realistic standpoint, it is highly unlikely that the economic interests of the stakeholders at Holdco will derive any return from a sale of Opco.

57. In paragraph 69(b) of the Responding Affidavit, Aziz contends that my prior affidavit was inaccurate because the Proposed Transaction would pay all of Opco's obligations and "preserve any First Lien Note Holders right to argue for an entitlement to a 'Make Whole Premium'".

58. For the reasons previously stated, I believe that there is a very substantial risk that even if the "Proposed Transaction" ever becomes real, it will never be approved or implemented. In any event, there is no guarantee that all of Opco's obligations could be satisfied in any such prospective transaction. Nor is there any guarantee that the rights and interests of <u>unconflicted</u> First Lien Note Holders (like Catalyst) to the Make Whole would be preserved: as described below, no such guarantee existed in the structure of the prior transaction for which the Mobilicity Group initially sought approval. I also note Aziz's reference to "indications of value" of

Mobilicity's assets from "other potential transactions". I have no idea what this means. I do not believe that there are any "other transactions" that provide any reliable "indications of value".

59. Paragraph 59(c) of Aziz's Responding Affidavit claims that the objective of the Mobilicity Group is to maximize value for all stakeholders. Nowhere does Aziz acknowledge the fundamental conflict that exists in the Mobilicity Group structure. The reality is that the Mobilicity Group has committed itself to transactions and entered into covenants that favour the creditors at the Holdco level to the exclusion of and in a manner detrimental to the interests and rights of the unconflicted First Lien Note Holders of Opco.

60. Regarding paragraph 59(d) of the Responding Affidavit, because Catalyst has been totally excluded from and been denied information about the sale process, Catalyst does not know how any bids have been solicited. The simple fact is that the Mobilicity Group was unsuccessful in attracting any prospective buyers over a lengthy process late last year. I do not know whether, in that process, or subsequently, any attempt was made to sell Opco as a stand-alone entity. Given the merging of Opco and Holdco interests described previously, I question whether this was attempted.

61. I have previously commented upon my and Catalyst's belief that the value of Opco is deteriorating and the security for the First Lien Notes has been placed at risk. I disagree with the statements made by Aziz in paragraph 59(e) of the Responding Affidavit.

62. Aziz's Responding Affidavit also contains allegations regarding certain events relating to Catalyst's oppression application, in particular, with reference to the $71 million fund provided for in the May 28, 2013 CBCA Order issued by Justice Campbell.

63. It is true that the Mobilicity Group's CBCA application contained provisions which might have resulted in such a fund. What Aziz fails to explain is that up until the day before the return of that application, the Mobilicity Group's Acquisition Transaction contained provisions that enabled the Conflicted First Lien Holders to exercise an election by which they could unilaterally extinguish any such potential fund and eliminate any possibility for a Make Whole payment. The ability of the Conflicted First Lien Holders to exercise an election having this result was only abandoned as a result of Catalyst's strenuous opposition to these provisions: previously the Mobilicity Group had made it clear that the intent of the Telus Acquisition Transaction for which it was seeking approval was NOT to pay any Make Whole premium.

64. Aziz's affidavits also fail to refer to the fact that even after the above stratagem was abandoned by the Conflicted First Lien Holders, extensive negotiations continued between Catalyst and the Mobilicity Group regarding the form of the approval order being sought. As a result of these negotiations, specific provisions setting out the terms of the $71 million fund in a manner preserving Catalyst's ability to fully and effectively argue in favour of its entitlement to be paid its share of the Make Whole premium were agreed upon. But for Catalyst's strenuous opposition to the approval order originally sought by the Mobilicity Group, the above provisions would never have found their way into Justice Campbell's May 28, 2013 Order.

65. In my view, a description of Justice Campbell's Order and the process leading up to its issuance which omits the above facts is incomplete.

66. In paragraphs 42-54 of the Responding Affidavit, Aziz refers to certain correspondence regarding Catalyst's unsuccessful efforts to engage the Mobilicity Group in a dialogue about

financing options. Now shown to me and marked as **Exhibit "G"** is a true copy of additional communications to the Mobility Group's counsel which provide a fuller picture of what happened.

67. As indicated by the above communications, Catalyst took steps to schedule the cross-examination of Aziz because it wanted to avoid a repetition of the Mobilicity Group's earlier efforts to proceed with approval hearings in a manner which prejudiced Catalyst's ability to place all the facts before the Court. The above communications also show that Catalyst initiated the above steps after the Mobilicity Group had brushed off Catalyst's attempts at a dialogue in early June. Exhibit "G" above also demonstrates that despite the Mobilicity Group's continued unwillingness to engage in any dialogue, in early August Catalyst still sought to do so. The reason that no meeting took place prior to Aziz's cross-examination on August 16, 2013 was because Catalyst was advised that this was the only date that Aziz had available for any purpose.

68. The Responding Affidavit also makes reference to Exhibit N, a "side letter" sent to Catalyst in September 2013. As paragraph 55 of the Responding Affidavit and Exhibit N both indicate, the context was that a non-disclosure agreement already existed. In these circumstances, the substantive effect of the proposed "side letter" would have required Catalyst to agree to specific terms of the February Financing which favoured the Conflicted First Lien Holders and which Catalyst was contesting in its pending court application.

69. Finally, paragraph 58 of the Responding Affidavit again makes reference to a communication from Mr. Kestenberg to Mr. Moore on September 19, 2013. For some reason, as was the case in Aziz's September 29, 2013 affidavit, the information provided about this

communication is incomplete. Now shown to me and marked as **Exhibit "H"** is a true copy of communications with Mr. Kestenberg on September 19, 2013, which accurately summarized the discussion which took place between Mr. De Alba and Mr. Goldberg. I am advised by David C. Moore and verily believe that no reply was ever received to the communications contained in Exhibit "H".

CONCLUSION

70. I reaffirm the contents of my October 9, 2013 affidavit.

71. An Opco Creditor Committee established on terms of reference arrived at after further discussion with the Monitor is important to ensure a fair and balanced process going forward. In my view an opportunity for a fair and even handed DIP financing solicitation process is also important. I expect that any DIP financing resulting from such a process would be on more favourable financial terms, would not be subject to subjective conditions that make the current DIP financing available only at the option of the DIP lenders. Such a process would provide the Court with confidence that the DIP loan is the best facility available and was arrived at as a result of a fair and even-handed process, which took into account the interests of all stakeholders.

72. This affidavit is sworn in support of the relief sought in Catalyst's Notice of Motion dated October 8, 2013, and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 19th day of October, 2013.)

David Moore

Commissioner for Taking Affidavits (or as may be)

James Riley

James Riley

This is Exhibit ....A.......... referred to in the

affidavit of ....James Riley..........

sworn before me, this ....19th..........

day of ....October.................. 2013

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A COMMISSIONER FOR TAKING AFFIDAVITS

Commercial List No ____________________

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Applicant

-and-

DATA & AUDIO – VISUAL ENTERPRISES WIRELESS INC.

Respondents

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 AND ARRANGEMNT OF DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC.

REQUEST TO INSPECT DOCUMENTS

You are requested to produce for inspection the following documents referred to in the affidavit of William Aziz, dated September 25, 2013 (the "Affidavit"):

1. The "draft term sheet" referred to in Paragraph 47 of the Affidavit;

2. The "request to initiate a review" referred to in Paragraph 47 of the Affidavit;

3. The "request for confirmation" referred to in Paragraph 50 of the Affidavit;

4. The "inquiries from Industry Canada on this specific matter" referred to in Paragraph 51 of the Affidavit.

September 26, 2013

BELLMORE & MOORE
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

David C. Moore - LSUC # 16996U
Tel. No. (416) 581-1818 Ext. 222
Fax. No. (416) 581-1279
Email: david@bellmore.ca

Lawyers for Catalyst Capital Group Inc.

TO

NORTON ROSE FULBRIGHT
Royal Bank Plaza, South Tower
Suite 3800
200 Bay Street
Toronto, ON M5K 1H1

Orestes Pasparakis LSUC No. 36851T
Tel: 416-216-4815
Marc Kestenberg LSUC No. 48932A
Tel: 416-216-3977
Fax: 416-360-8277

Lawyers for Data & Audio – Visual Enterprises Wireless Inc., Data & Audio – Visual Enterprises Holdings Inc., Data & Audio – Visual Enterprises Leasing Inc.

Commercial List No: ____________

The Catalyst Capital Group Inc.	v	*Data & Audio – Visual Enterprises Wireless Inc.*
Applicant		Respondents

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 AND ARRANGEMNT OF DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

REQUEST TO INSPECT DOCUMENTS

BELLMORE & MOORE
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Lawyers for Catalyst Capital Group Inc.

NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

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Royal Bank Plaza, South Tower, Suite 3800
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Marc Kestenberg
+1 416.216.3977
marc.kestenberg@nortonrosefulbright.com

Our reference
01021782-0006

September 27, 2013

Sent By E-mail

David C. Moore
Bellmore & Moore
Barristers and Solicitors
Suite 1600
393 University Avenue
Toronto, ON M5G 1E6

Dear Mr. Moore:

Mobilicity re: Catalyst

We are in receipt of your letter addressed to Orestes Pasparakis, dated September 26, 2013. In the future please copy both my partner Robert Frank and me on correspondence relating to this matter.

We have considered your Request to Inspect pursuant to Rule 30.04(2) of the *Rules of Civil Procedure*.

As you are aware, the Affidavit of William E. Aziz was sworn on September 25, 2013 in support of a request for an adjournment of the Catalyst CCAA Application (see paragraphs 6 and 55 of his Affidavit). Your client's actions resulted in the Mobilicity Group seeking an adjournment because your client was threatening to proceed with its CCAA Application on September 26, 2013, if an adjournment was not granted.

On the morning of September 26, 2013, Justice Newbould adjourned the Catalyst CCAA Application until Monday September 30, 2013.

In the circumstances, Mr. Aziz' Affidavit is spent. There is no need to provide any of the requested documents since the adjournment request has now been adjudicated.

Accordingly, the documents in your Request to Inspect will not be made available for inspection.

Yours very truly,

Marc Kestenberg

MK/ac

Copies to: Orestes Pasparakis, Norton Rose Fulbright Canada LLP
Robert Frank, Norton Rose Fulbright Canada LLP
William E. Aziz, Blue Tree Advisors II Inc.

DOCSTOR: 2823814

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

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 ARRANGEMNT OF 8440522 CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC.

Applicants

REQUEST TO INSPECT DOCUMENTS

YOU ARE REQUESTED TO PRODUCE FOR INSPECTION pursuant to Rule 30.04(1)(3) of the *Rules of Civil Procedure*, the documents listed in **Schedule "A"** hereto referred to in the Affidavit of William Aziz, sworn September 29, 2013 (the "Affidavit").

October 11, 2013

BELLMORE & MOORE
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, ON M5G 1E6

David C. Moore - LSUC # 16996U
Tel. No. (416) 581-1818 Ext. 222
Fax. No. (416) 581-1279
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Diana M. Soos
LSUC No. 49914P
Tel No. (416) 581-1818 ext. 225
Fax No. (416)581-1279
Email: dmsoos@bellmore.ca

Lawyers for Catalyst Capital Group Inc.

TO **NORTON ROSE FULBRIGHT**
Royal Bank Plaza, South Tower
Suite 3800
200 Bay Street
Toronto, ON M5K 1H1

Orestes Pasparakis LSUC No. 36851T
Tel: 416-216-4815

Marc Kestenberg LSUC No. 48932A
Tel: 416-216-3977
Fax: 416-360-8277

Lawyers for 8440522 Canada Inc., Data & Audio – Visual Enterprises Wireless Inc., Data & Audio – Visual Enterprises Holdings Inc., Data & Audio – Visual Enterprises Leasing Inc.

SCHEDULE "A"

1. The "material records of the Mobicility Group" referred to in paragraph 5 of the Affidavit which were reviewed by William Aziz ("Aziz"), including but not limited to any and all relevant Minutes of Board of Directors Meetings, or extracts therefrom, and any and all documentation relating to offers to purchase the Mobilicity Group or offers to provide financing to the Mobilicity Group;

2. the "expression of interest" from a significant U.S. based wireless service provider referred to in paragraph 8(d) of the Affidavit;

3. the "Note Purchase, Guarantee, Backstop Agreement, dated February 6, 2013" in an un-redacted form, including all schedules thereto, referred to in paragraph 73 of the Affidavit;

4. the "FA Engagement Letters" referred to at paragraphs 91 and 188 of the Affidavit and marked as confidential exhibits "K" and "L" to the Affidavit;

5. the "Adequate Protection Letter", referred to at paragraph 97 of the Affidavit;

6. the "recent offers" for or received by the Mobilicity Group, referred to at paragraphs 115 and 145 of the Affidavit,

7. an un-redacted copy of the DIP Loan Agreement referred to at paragraph 176 and attached as Exhibit "EE" to the Affidavit;

8. the "comparable indications of interest received in connection with the Proposed Transaction and from other third parties", referred to at paragraph 180(e) of the Affidavit.

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

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 ARRANGEMNT OF 8440522 CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

REQUEST TO INSPECT DOCUMENTS

BELLMORE & MOORE
Barristers and Solicitors
393 University Avenue, Suite 1600
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Diana M. Soos LSUC # 49914P
Tel: (416) 581-1818
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Email: david@bellmore.ca
Email: dmsoos@bellmore.ca

Lawyers for The Catalyst Capital Group Inc.

NORTON ROSE FULBRIGHT
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Marc Kestenberg
+1 416.216.3977
marc.kestenberg@nortonrosefulbright.com

October 16, 2013

Sent By E-mail

David C. Moore
Bellmore & Moore
Barristers and Solicitors
Suite 1600
393 University Avenue
Toronto, ON M5G 1E6

Our reference
01021782-0006

Dear Mr. Moore:

Mobilicity re Catalyst

Thank you for your email to Mr. Pasparakis dated Friday, October 11, 2013 at 6:31 p.m. We have reviewed the Request to Inspect that was attached to that email and respond as follows:

With respect to items 3, 5 and 7 of your Request, the only aspects of the Note Purchase, Guarantee, Backstop Agreement (the "NPA") that were redacted were the signature pages. Your client is aware of the identities of the signatories to the NPA. The Schedules to the NPA have all been provided to your client with the exception of the Disclosure Letter and the Adequate Protection Letter. Meanwhile, the only information in the DIP Loan Agreement that has been redacted are the identities of the DIP lenders and their respective commitment levels. The Mobilicity Group is contractually obligated to keep these documents confidential. That said, the Mobilicity Group has obtained permission to make copies of the Disclosure Letters to each of the NPA and the DIP Loan Agreement (with personal information redacted) and the Adequate Protection Letter available for inspection provided that you and your client agree to keep those documents in strict confidence and confirm that they will only be used in connection with this CCAA proceeding and not for any other purpose whatsoever.

With respect to items 1, 2, 6 and 8, you have requested to inspect documents, to the extent those documents exist, that are not specifically referred to in the Affidavit of Mr. Aziz, dated September 29, 2013 and are, therefore, not the proper subject of a Request to Inspect. These documents will not be made available for inspection.

With respect to item 4 of your Request, the "FA Engagement Letters" contain commercially sensitive information. The Mobilicity Group is contractually obligated to keep those documents confidential. In any event, all costs arising from or relating to those Letters rank subordinate to your client's First Lien Notes. In any event, the FA Engagement Letters are not relevant to the Comeback Motion. Accordingly, those Letters will not be made available for inspection.

DOCSTOR: 2836445

NORTON ROSE FULBRIGHT

Yours very truly,

Marc Kestenberg
Partner

mk/ac

DOCSTOR: 2836445

Bellmore & Moore
Barristers & Solicitors

Brian P. Bellmore, B.Sc., LL.B., LL.M.
David C. Moore, B.Sc., LL.B.
Karen M. Mitchell, B.A., LL.B.
Kenneth G.G. Jones, LL.B.
Diana M. Soos, B.Sc., M.B.A., LL.B.

Suite 1600
393 University Avenue
Toronto, Canada
M5G 1E6
Tel: 416-581-1818
Fax: 416-581-1279

October 17, 2013

VIA EMAIL

Marc Kestenberg
Norton Rose Canada LLP
Royal Bank Plaza, South Tower
Suite 3800, 200 Bay Street
Toronto, ON, M5J 2Z4

Dear Mr. Kestenberg:

Re: Mobilicity re Catalyst Capital Group Inc. ("Catalyst")

1. Thank you for your letter of October 16, 2013 regarding Catalyst's Request to Inspect, dated October 11, 2013 (the "Request").

2. With respect to paragraph 2 of your letter in response to Items 3, 5 and 7 listed in Schedule A to the Request, we are content to proceed as you have suggested and confirm that Catalyst will keep these documents in strict confidence and will only use these documents in connection with the CCAA proceeding. However, our agreement to proceed in this manner, is subject to the reservation of our right to demand inspect of completely un-redacted copies of the referenced document until after we have viewed the extent and impact of the "personal information" you wish to redact.

3. With respect to paragraph 3 of your letter in response to Items 1, 2, 6, and 8 listed in Schedule A of the Request, we do not agree with your position. In *Timminco Limited* v. *Asensio et. al.* (2009) 95 O.R. (3d) 547, Justice Brown reviewed Rule 30.04(2) and concluded:

> [19] The jurisprudence surrounding rule 30.04(2) reveals that courts regarding compliance with a request to inspect as immediate and mandatory. In 1483881 Ontario, supra, Master McLeod wrote, as para. 6:
>
> > In the case of [a demand for particulars], the cases are clear that pre-defence particulars will only be ordered when they are necessary for

> the purpose of pleading. There is no such requirement in Rule 30.04. Referring to a document in an originating process gives rise to an immediate right of inspection. The defendant need only serve a request to inspect documents in form 30C and a date and time for inspection must be provided within 5 days of the demand. There is no basis for refusing to do so.
>
> [20] The mandatory nature of the production obligation under rule 30.04(2) is emphasized by the obligation of the party to produce a document referred to in its pleading whether or not the document otherwise would be privileged: Durall Construction, supra, at para 7.
>
> ...
>
> [28] First, as I noted above, in paras 19 and 20, the case law has treated the obligation of produce as mandatory. Carve-outs have not been made for certain types of documents referred to in pleadings in certain kind of cases. Even where a party has referred to an otherwise privileged document in its pleading, it must be produced if inspection is requested.
>
> ...
>
> [30]...It was Timminco's choice to refer to the contracts in its pleading; it has to live with the consequences of that choice.
>
> (Underlining added)

4. *Timmico* has subsequently been referred to with approval: See *1623242 Ontario Inc.* v. *Great Lakes Copper*, [2013] O.J. No. 2490, at para 102 (per D.G. Price, J.); *1483860 Ontario Inc.* v. *Beaudoin* [2011] O.J. No. 5054 at para 16 (per L.B. Roberts, J.); and *D'Aguanno* v. *VIPR Industries Inc.* [2010] O.J. No. 2487 at para 6 (per Master R.A. Muir).

5. In addition, the Court in *Friends of Lansdowne* v. *Ottawa (City),* [2011] O.J. No. 669 held that were an affidavit gives the impression that it is referring to a document(s) and if it is the case that such document(s) exists, then that document(s) "forms part of the affidavit evidence and must be produced", at paragraph 30:

> The only other document which appears to be referred to and which has not been produced is the "detailed evaluation of the LPP" referred to in paragraph 73. I agree with the applicant that the paragraph gives the impression the "evaluation" is a document and if that is the case it forms part of the affidavit evidence and must be produced. If the "evaluation" is not a document, then that should be clearly explained."
>
> (Underlining added)

See also paragraph 32 of *Friends of Lansdowne, supra.*

6. With respect to the documents referred to in Item 1 listed in Schedule A of the Request, I should also add that while the reference in Mr. Aziz's September 29, 2013 affidavit is broadly worded, this component of the Request to Inspect relates to "material documents" which he specifically reviewed to prepare and swear that affidavit and in my view fall within the above principles. Furthermore, inspection of such documents in advance of the cross-examination will render the whole process more efficient and is in keeping with the oft-repeated 3C's of the Commercial List Practice.

7. We therefore reiterate Catalyst's request to inspect the documents listed in Items 1, 2, 6 and 8 of Schedule A to the Request, or request that you provide us with a clear explanation in accordance with the above principles.

8. With respect to paragraph 4 of your letter in response to Item 4 listed in Schedule A of the Request, with respect a claim of "confidentiality" does not give rise to a valid basis for denying inspection of the FA Letters pursuant to a Rule 30.04(2) request. In fact, as referred to in the passages from *Timminco Limited* v. *Asensio et. al.* cited above, even claims of "privilege" will not shield a document from a Rule 30.04(2) request to inspect. The FA Letters are clearly referred to as documents in Mr. Aziz's affidavit, and as such they are relevant and we are entitled to inspect those documents.

9. To facilitate matters, if necessary, we are prepared to stipulate that Catalyst will keep the documents referred to in paragraphs 1, 2, 4, 6 and 8 confidential and will use them only in connection with the CCAA proceeding.

10. I would like to make arrangements to review the above documents as soon as possible, **preferably later today or tomorrow.** This should also include the documents identified in the Request to Inspect, dated September 26, 2013, to which the same principles apply.

11. I would respectfully request that you reconsider your position in light of the above. I look forward to hearing from you.

Yours very truly,

BELLMORE & MOORE

David C. Moore

David C. Moore

DCM/dms

Enclosures: *Timminco Limited* v. *Asensio et. al.* (2009) 95 O.R. (3d) 547
Friends of Lansdowne v. *Ottawa (City)*, [2011] O.J. No. 669

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Friday, October 18, 2013 8:21 AM
To: David Moore
Cc: Pasparakis, Orestes
Subject: Re: Response to Request to Inspect [OR-EDRMS.FID6125537]

David,

The Affidavit was sworn September 29th. It was your decision to wait two weeks to serve this Request.

You will have our response to yesterday's letter today.

Marc Kestenberg
Partner

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
TD Waterhouse Tower, Suite 2300
79 Wellington Street West, P.O. Box 128, Toronto, ON M5K 1H1, Canada
T: +1 416.216.3977 | F: +1 416.216.3930
Marc.Kestenberg@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David Moore [mailto:david@bellmore.ca]
Sent: Friday, October 18, 2013 08:14 AM Eastern Standard Time
To: Kestenberg, Marc
Subject: RE: Response to Request to Inspect [OR-EDRMS.FID6125537]

Strictly speaking, the rules provide for 5 days. We are operating under a very tight timetable with compressed cross examinations. In my view, in these circumstances, if Mobilicity were acting reasonably, it would make all the documents required to be produced under the Rules available —not just the ones it chooses to agree to—as quickly as possible, not just on the last possible day.

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Thursday, October 17, 2013 10:31 PM
To: David Moore; Pasparakis, Orestes
Cc: Gauthier, Virginie
Subject: RE: Response to Request to Inspect [OR-EDRMS.FID6125537]

David,

Under the Rules we were served with the Request to Inspect on Tuesday. We responded on Wednesday. We have 5 business days to make any documents available for inspection. Our clients are equally entitled to rely on the Rules.

That said, we will produce the documents agreed to tomorrow morning. We will also provide you with a substantive response to your most recent letter tomorrow.

We trust this is satisfactory.

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
TD Waterhouse Tower, Suite 2300
79 Wellington Street West, P.O. Box 128, Toronto, ON M5K 1H1, Canada
T: +1 416.216.3977 | F: +1 416.216.3930
Marc.Kestenberg@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David Moore [mailto:david@bellmore.ca]
Sent: October-17-13 9:17 PM
To: Pasparakis, Orestes
Cc: Kestenberg, Marc; Gauthier, Virginie
Subject: RE: Response to Request to Inspect

There was a message at 2:17 pm, which I did not pick up until just now. Your message said absolutely nothing about the Request to Inspect, which was the subject of my letter earlier in the afternoon. Rather your voice mail referred **exclusively** to the logistics of the cross-examinations. So I am not sure how it affects the accuracy of what I wrote below.

In any event I will try to reach you before I leave, but if we do not talk tonight (I have to leave here shortly), I will call you first thing in the morning to discuss the arrangements for Monday.

From: Pasparakis, Orestes [mailto:Orestes.Pasparakis@nortonrosefulbright.com]
Sent: Thursday, October 17, 2013 8:38 PM
To: David Moore; Kestenberg, Marc
Cc: Gauthier, Virginie
Subject: Re: Response to Request to Inspect

I did call you today and did not get a return call. That didn't make it into your email below.

Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
TD Waterhouse Tower, Suite 2300
79 Wellington Street West, P.O. Box 128, Toronto, ON M5K 1H1, Canada
T: +1 416.216.4815 | F: +1 416.216.3930
Orestes.Pasparakis@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David Moore [mailto:david@bellmore.ca]
Sent: Thursday, October 17, 2013 08:28 PM
To: Kestenberg, Marc
Cc: Pasparakis, Orestes; Gauthier, Virginie
Subject: RE: Response to Request to Inspect

So far there has been no response to my letter referred to below.

Regardless of what that response may be, please immediately forward copies of the Adequate Protection Letter and the Disclosure Letters.

From: Diana Soos
Sent: Thursday, October 17, 2013 1:45 PM
To: Kestenberg, Marc; David Moore
Cc: Pasparakis, Orestes; Gauthier, Virginie
Subject: RE: Response to Request to Inspect

Dear Mr. Kestenberg:

Please see enclosed letter from David Moore, dated October 17, 2013, in response to your correspondence attached below.

Sincerely,

Diana M. Soos
Bellmore & Moore
Barristers & Solicitors
393 University Avenue, Suite 1600
Toronto, Ontario M5G 1E6
Tel. No. (416) 581-1818 ext. 225
Fax No. (416) 581-1279
Email: dmsoos@bellmore.ca
Website: www.bellmore.ca

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Wednesday, October 16, 2013 4:57 PM
To: David Moore
Cc: Pasparakis, Orestes; Gauthier, Virginie
Subject: Response to Request to Inspect [OR-EDRMS.FID6125537]

David,

Please see attached.

Marc Kestenberg
Partner
Norton Rose Fulbright Canada LLP / S.E.N.C.R.L., s.r.l.
TD Waterhouse Tower, Suite 2300
79 Wellington Street West, P.O. Box 128, Toronto, ON M5K 1H1, Canada
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Norton Rose in Canada ranked number one law firm brand - Acritas' Canadian Law Firm Brand Index 2013

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F: +1 416.360.8277
nortonrosefulbright.com

Orestes Pasparakis
+1 416.216.4815
orestes.pasparakis@nortonrosefulbright.com

Our reference
01021782-0006

October 18, 2013

Sent By E-mail

David C. Moore
Bellmore & Moore
Barristers and Solicitors
Suite 1600
393 University Avenue
Toronto, ON M5G 1E6

Dear Mr. Moore:

Mobilicity re Catalyst Capital Group Inc. (Catalyst)

We are in receipt of your correspondence dated October 17, 2013.

Please find enclosed the documents we agreed to provide you pursuant to Mr. Kestenberg's letter dated October 16, 2013, which are provided to you in the form and on the conditions described therein.

As stated in Mr. Kestenberg's letter, the documents you have requested at items 1, 2, 6 and 8 of your Request to Inspect (the **Request**) are not specifically referred to in Mr. Aziz's affidavit. Moreover:

1 You are seeking information/documentation that is commercially sensitive. Production of this information would cause prejudice to the legitimate commercial interests of the Mobilicity Group and its stakeholders. As you are no doubt aware, undue prejudice is a basis to refuse production of a document under Rule 29.2.03.

2 We do not agree that Catalyst has any entitlement at all to inspect documents. Rule 30.04(2) restricts the entitlement to obtain inspection of documents to "parties". The only live proceeding is the Mobilicity Group's CCAA proceeding and Catalyst is not a "party" to that proceeding. Our production of certain documents thus far has been as a courtesy given Catalyst's position as a creditor, not pursuant to any obligation under the *Rules*.

3 The Request is inappropriate in the context of an ongoing CCAA proceeding. The Mobilicity Group is currently attempting to work constructively toward restructuring goals for the benefit of all stakeholders. It is both necessary and important for the Mobilicity Group to focus its time and resources on the restructuring efforts at hand rather than to get side-tracked by adversarial litigation.

4 The FA Engagement Letters were sealed pursuant to paragraph 63 of the Initial Order given their commercially sensitive nature. They should not be produced without further direction of the Court.

In your e-mail correspondence with Mr. Kestenberg earlier today, you asked for a response to your previous Request to Inspect. That request was in relation to the Affidavit of William Aziz sworn September 25, 2013. In addition to the reasons articulated above, that affidavit was spent as of the September 26, 2013 adjournment hearing, and as a result Catalyst has no rights of inspection arising from that affidavit.

We are also in receipt of your Notice of Examination for Mr. Aziz. Once again, you have made an extensive request for documents late on a Friday, on the eve of the examination. You will appreciate that the company's management and its counsel are currently focused on the operational needs of the Mobilicity Group and guiding it through its restructuring. These types of clearly tactical requests are unnecessary, unproductive and distracting. If the documents/information were truly important and necessary, the request would have been made much earlier, so that we would have had sufficient time to consider it.

Your conduct is particularly troubling given that we have discussed this issue previously, on the record during Mr. Aziz's August 13, 2013 examination. You had served a Notice of Examination with a request for documents on the eve of the examination, as you have done today. I advised you that we would have been willing to reasonably accommodate your request had it been made with reasonable notice, and you agreed with my position (see transcript, qq. 264-266, pp. 64-65).

I advised you last week that we would approach the cross-examinations on a "tit-for-tat" basis. There are large categories of documents we would have liked to have had well in advance of the cross-examinations, including:

1 documents showing that Catalyst is a 32 % holder of 9.5% First Lien Notes, including documentation showing when Catalyst acquired those 9.5% First Lien Notes;

2 emails or other internal and external correspondence discussing the decision by Catalyst to acquire the 9.5% First Lien Notes;

3 any financial analyses supporting Catalyst's past $200 million and $100 million financing and restructuring proposals to the Applicants;

4 all emails or other correspondence to or with representatives of, or advisors to, Wind, Public Mobile, TELUS, Rogers, Bell Canada, and any other wireless telecommunications services providers in the Canadian market;

5 all emails or other correspondence to or with representatives of, or advisors to, Birch Hill Equity Partners relating to wireless telecommunications matters;

6 all emails or other correspondence to or with reporters, other members of the media or other industry participants in which the Mobilicity Group was referred to;

7 emails or other correspondence with any party believed by Catalyst to be a holder, or representative of a holder, of securities issued by the Applicants;

8 emails or other correspondence regarding any proposal, or consideration of a proposal, to acquire any securities issued by the Applicants; and

9 emails or other correspondence with representatives of the Federal Government, including Industry Canada or any regulator, in which the Mobilicity Group was referred to.

Nonetheless, and again to assist you, if there are one or two documents you need (and that are not confidential), we will do our best to locate them and make them available for your inspection by Monday at 9:00 am.

Yours very truly,

Orestes Pasparakis /

Orestes Pasparakis

Copy to: Marc Kestenberg, *Norton Rose Fulbright Canada LLP*

DOCSTOR: 2840194

This is Exhibit ......B........ referred to in the

affidavit of ......James Riley..........

sworn before me, this ......19th..........................

day of ......October.......................2013

......Dan J. Moore...

A COMMISSIONER FOR TAKING AFFIDAVITS

Government of Canada Gouvernement du Canada Canada

Canada News Centre

Industry Canada Industrie Canada

Harper Government Protecting Consumers and Increasing Competition in Canadian Wireless Sector

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Ottawa, Ontario, June 4, 2013—The Honourable Christian Paradis, Minister of Industry, today announced decisions to further promote competition in the Canadian wireless telecommunications market to give Canadians access to the latest technology at better prices.

"Our government is clearly committed to encouraging competition in the wireless market so that Canadian families will benefit from cutting-edge technologies and services at affordable prices," said Minister Paradis. "I believe the basis of a strong economy is a competitive marketplace and consumer choice. We will continually review the regulations and policies that apply to the wireless telecommunications sector to promote at least four wireless providers in every region of the country so that Canadian consumers benefit from competition."

The Minister also announced that TELUS' application to transfer Mobilicity's spectrum licences will not be approved. Mobilicity's licences were among those set aside for new entrants in the 2008 Advanced Wireless Services (AWS) auction, which included restrictions on transferring licences to incumbents.

"Our government has been clear that spectrum set aside for new entrants was not intended to be transferred to incumbents. We will not waive this condition of licence and will not approve this, or any other, transfer of set-aside spectrum to an incumbent ahead of the five-year limit," said Minister Paradis. "Our government will continue to allow wireless providers access to the spectrum they need to compete and improve services to Canadians. We are seeing Canadian consumers benefit from our policies and we will not allow the sector to move backwards. I will not hesitate to use any and every tool at my disposal to support greater competition in the market."

In addition, the Government also outlined improvements to the policy on spectrum licence transfers that will be released in the coming weeks, which followed consultations launched in March 2013. Going forward, proposed spectrum transfers that result in undue spectrum concentration—and therefore diminish competition—will not be permitted. This policy will apply to all commercial mobile spectrum licences, including the 2008 AWS licences.

All applications for licence transfers will be reviewed on a case-by-case basis and decisions will be issued publicly to increase transparency.

In light of these decisions, the timing of the 700 MHz auction has been updated. The application deadline will now be September 17, 2013, and the auction will commence on January 14, 2014. These new dates will provide companies with additional time to consider today's decisions and finalize their approaches to the auction process.

In 2008, the Government set aside AWS spectrum for new entrants and introduced roaming and tower-sharing policies. In 2012, foreign investment restrictions were lifted for telecom companies that hold less than a 10-percent share of the total Canadian market. Earlier this year, the Government announced several measures, including expanding and extending the requirement for companies to provide roaming to competitors, strengthening cell tower sharing rules, and ensuring at least four providers in every region can acquire spectrum in the upcoming 700 MHz and 2500 MHz auctions.

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Spectrum Management and Telecommunications

Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum

Aussi disponible en français

Canada

Contents

1. Introduction

1.1 Intent

1. Through the release of this Framework, Industry Canada hereby announces the decisions resulting from the consultation process undertaken in *Canada Gazette* notice DGSO-002-13, *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences*.

2. All comments and reply comments received in response to the consultation document are available on Industry Canada's website at: http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/h_sf10568.html.

3. This paper sets out changes to existing conditions of spectrum licences in bands for commercial mobile spectrum and to Industry Canada's publication, *Licensing Procedure for Spectrum Licences for Terrestrial Services* (CPC-2-1-23), hereinafter referred to as the Spectrum Licence Procedures. This document sets out the procedures related to requests involving the transfer, division or subordinate licensing of these spectrum licences.

4. This Framework applies in addition to the existing provisions of the Spectrum Licence Procedures and will be integrated into them. All other provisions of the Spectrum Licence Procedures are unchanged and will continue to apply to spectrum licences issued both for commercial mobile spectrum and for all other services.

1.2 Mandate

5. The Minister of Industry, through the *Department of Industry Act*, the *Radiocommunication Act*, and the *Radiocommunication Regulations*, with due regard to the objectives of the Canadian telecommunications policy set out in Section 7 of the *Telecommunications Act*, is responsible for spectrum management in Canada. As such, the Minister is responsible for developing policies for spectrum utilization and ensuring effective management of the radio frequency spectrum resource. Pursuant to the *Radiocommunication Act*, the Minister has the authority to plan the allocation and use of spectrum, to issue licences, and to fix and amend the terms and conditions of licences.

6. In developing licensing frameworks and policies, Industry Canada is guided by the objectives stated in Section 7 of the *Telecommunications Act* and the policy objective stated in the *Spectrum Policy Framework for Canada* in order to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum.

1.3 Policy Objectives

7. Industry Canada has developed this Framework to support the Government's policy objective to maximize the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource, including the efficiency and competitiveness of the Canadian telecommunications industry, and the availability and quality of services to consumers.

8. The intent of the Framework is to provide guidance to licensees as to how transfers of spectrum licences will be reviewed, as well as to introduce additional conditions of licence regarding the transfer

of control of spectrum licences, all with an eye to managing the spectrum resource for the benefit of Canadians as per the policy objectives outlined above.

1.4 Background and Considerations

9. This Framework complements other measures taken by the Government of Canada to increase competition in the provision of wireless telecommunications services. It enhances Industry Canada's existing processes and guidance in its review of the transfer of spectrum licences. Reviewing spectrum licence transfers supports the Government of Canada's policy objectives in the wireless telecommunications sector. Access to sufficient spectrum is a precondition to the provision of wireless services. Undue concentration of spectrum among a small number of wireless service providers can be detrimental to competition.

10. Reviews conducted by Industry Canada, pursuant to the *Radiocommunication Act*, are separate from those conducted by the Competition Bureau pursuant to the *Competition Act*. Under the *Radiocommunication Act*, the Minister of Industry reviews spectrum licence transfers as part of the mandate to plan the allocation and use of spectrum. Under the *Competition Act*, mergers (which can include acquisitions of assets, including spectrum licences) may be reviewed by the Competition Bureau to determine whether they prevent or lessen, or are likely to prevent or lessen, competition substantially. As part of its assessment of mergers, the Bureau examines all relevant businesses of the parties, and considers a number of factors to determine the impact of the merger on competition in relevant markets. In addition, the Bureau may review agreements or arrangements involving radio spectrum between competitors or potential competitors under a civil provision of the *Competition Act* that prohibits agreements that prevent or lessen, or are likely to prevent or lessen, competition substantially. The approach for analyzing competitive effects under this civil provision is similar to the analytical approach applied for mergers. Under the criminal conspiracy provision in the *Competition Act*, subject to limited defences, conspiracies, agreements or arrangements between competitors or potential competitors to fix prices, to allocate markets or to restrict output are illegal. For the purposes of this Framework, the same types of agreements or arrangements may trigger transfer requests or requirements to notify, along with other obligations as outlined in this Framework, insofar as they lead to changes in Control of a Licence or the Control of a Licensee or Affiliate. In addition, such agreements or arrangements may be relevant to the review criteria and considerations, which are discussed in more detail below.

11. Under the *Radiocommunication Act*, any use of spectrum must be authorized by the Minister. Where any person acts in a manner that is contrary to the provisions outlined in this document such that they enter into agreements, arrangements or understandings to use spectrum without being authorized to do so by the Minister as outlined in the Spectrum Licence Procedures, they will be considered to be acting contrary to the *Radiocommunication Act* and will be subject to the enforcement provisions set out in that Act. Additionally, this Framework sets out amended conditions of licence that impose requirements on licensees related to transfers of spectrum licences. Licensees who do not act in accordance with these requirements will be considered to be acting in breach of their authorization, and therefore also acting contrary to the *Radiocommunication Act.*

1.5 Interpretation

12. A number of terms are used in this Framework, which are explained below:

Affiliate: An entity is an Affiliate of any other entity where it controls or is controlled by the other entity, or is controlled by any entity that also controls the first entity.

Agreement: Where the word "Agreement" is used in this document, it includes all forms of agreements, arrangements and understandings made in any manner or format.

Applicants: Applicants to a Transfer Request include the current licensee and the proposed transferee. In the case of a Deemed Transfer, the term Applicants will include, in addition to the licensee, the entity taking Control of the Licence or Control of the Licensee or Affiliate, and in the case of a Prospective Transfer, the term includes the entity to which the future Licence Transfer would be made.

Control of a Licence: A Licence is controlled by any party that has the power or ability, whether exercised or not, to determine or influence the use of all or part of the licensed spectrum or the disposition of all or part of the Licence. More than one entity at a time may exercise Control of a Licence.

Control of a Licensee or Affiliate: An entity has control of a licensee or Affiliate when it has the power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of the licensee or Affiliate or to manage and run its day-to-day operations, including, but not limited to, Control of a Licence. Control may be demonstrated by legal ownership rights or through other means. Where an entity holds more than 20% of the voting shares — or if there are no voting shares but an entity holds a greater than 20% stake in the beneficial ownership of a licensee or Affiliate — that entity will be presumed (subject to rebuttal) to have control of that licensee. Control may be demonstrated by an examination of a number of factors, including ownership interests, relationships and Agreements between the relevant parties, and/or the ability to exercise influence. Industry Canada may also consider the degree of control exercised by entities acting in concert with each other.

Deemed Transfer: Any immediate change to the Control of a Licence or Control of a Licensee or Affiliate that can be effected without making a Transfer Request, including a change made through the granting of any full or partial right or interest in a Licence through an Agreement.

Framework: In this decision paper, "Framework" means the entire set of decisions, including decisions to update the Spectrum Licence Procedures and to amend certain conditions of licence, as well as the explanation of the decisions set out in this document.

Industry Canada: For the purposes of this Framework, functions of the Minister of Industry under the *Radiocommunication Act* may be exercised by Industry Canada.

Licence: The term "Licence" in this document includes spectrum licences and subordinate licences.

Licence Transfer: A transfer of any Licence, including a division of a Licence, the granting of a subordinate Licence, or a Deemed Transfer.

Prospective Transfer: A Licence Transfer (contemplated by an Agreement) that is to be or may be completed or that will take effect at a future date, whether or not the date is specified.

Spectrum Licence Procedures: The procedures relating to Transfer Requests, as outlined in Industry Canada's publication, *Licensing Procedure for Spectrum Licences for Terrestrial Services* (CPC-2-1-23).

Transfer Request: In this document, a Transfer Request includes any request to transfer a Licence, to grant a subordinate Licence, or to divide a Licence that will result in the issuance of a new Licence, if approved.

2. Industry Canada Review of Spectrum Licence Transfer Requests

2.1 Scope of Application

13. In the consultation, Industry Canada proposed to apply the criteria and considerations set out therein to all Licences to which the Spectrum Licence Procedures apply. However, different spectrum bands are conducive to providing different services and Industry Canada recognizes that there are significant differences in the supply and demand conditions and in the competitive markets for these services. For example, the competitive environment for commercial mobile spectrum differs from that of the various fixed services. The licensing regime for commercial mobile spectrum reflects this difference, as the initial release of Licences is always through a competitive process — generally an auction — whereas fixed spectrum is licensed through a mixture of annual and long-term licences, which are issued through various competitive and non-competitive processes. Similarly, in today's market, the supply and demand conditions for spectrum for the provision of satellite services differ greatly from those of the terrestrial services.

14. Accordingly, this Framework will be applied to Licences for commercial mobile spectrum, which currently are those issued in the Cellular, Personal Communications Services (PCS), Advanced Wireless Services (AWS), Broadband Radio Service (BRS) and Wireless Communication Services (WCS) bands. As new spectrum is allocated for the purposes of providing commercial mobile services, these provisions will apply to those bands. As well, this Framework will apply to Licences issued pursuant to the upcoming auctions in the 700 MHz and 2500 MHz bands.

15. This Framework will apply to existing commercial mobile spectrum Licences. The provisions outlined in this Framework will be applied to Licence Transfers and Prospective Transfers, on or after the date of publication of this Framework.

16. The Minister of Industry may, in the future, impose the terms of this Framework or specific conditions of licence regarding Licence Transfers and Prospective Transfers to Licences in frequency bands or services not discussed within this Framework.

17. Additionally, Industry Canada notes that parties using spectrum that is licensed to another party (by virtue of spectrum sharing or other similar agreements) are required to seek a subordinate Licence from Industry Canada, under the terms set out in Industry Canada's Spectrum Licence Procedures. Accordingly, applications for subordinate Licences in commercial mobile spectrum bands will be reviewed by Industry Canada pursuant to this Framework. Similarly, arrangements for strategic alliances, joint ventures, and similar understandings may result in a change of Control of a Licence, which is subject to review under this Framework as a Deemed Transfer.

18. This Framework and any resulting changes to Industry Canada's Spectrum Licence Procedures and the relevant conditions of licence will apply to all Licence Transfers and Prospective Transfers in commercial mobile spectrum bands.

2.2 Threshold

19. In the consultation, Industry Canada asked whether a threshold (i.e. a measure of MHz-pop) or another type of screen or cap should apply when deciding whether to conduct a detailed review.

Summary of Comments

20. Many respondents provided a variety of suggestions as to potential thresholds for use by Industry Canada in determining whether or not to conduct a detailed review. Such proposals included the following suggestions: MHz-pop measurements, subscriber per MHz-pop, percentages of mobile spectrum held by the transferee or between the three licensees with the highest level of holdings, or some combination of these thresholds.

21. Some respondents expressed concerns that a threshold or another measure would capture transfers that would have an insignificant impact on spectrum concentration, or that such thresholds may be subject to "gaming" in cases where a series of small transactions could be completed to avoid review.

22. Other respondents submitted that it would be too difficult and too complex to determine an appropriate measure or formula applicable to most situations. They noted that many transfers are unique, and should therefore be reviewed on their own individual merits.

Discussion

23. Industry Canada explored a number of quantitative and other types of thresholds that could be employed to screen or to limit the number of spectrum licence transfer requests that would be subjected to a detailed review. As noted above, the focus of this Framework has been narrowed to concentrate on commercial mobile spectrum. However, Industry Canada has determined that there is no single measure that can address the complexity of the commercial mobile spectrum environment in the assessment of a Licence Transfer.

24. Commercial mobile spectrum is an important resource to be managed for the economic and social benefit of Canadians. As such, it is appropriate to subject all Licence Transfers and Prospective Transfers in these bands to a similar type of review. This will ensure that all transfers of licence for commercial mobile spectrum are reviewed against the criteria outlined in Section 2.3 of this decision paper.

Decision

25. Based on the above, Industry Canada will review Licence Transfers and Prospective Transfers of commercial mobile spectrum based on the considerations and criteria described below, which will be added to the current provisions in the Spectrum Licence Procedures.

2.3 Considerations and Criteria

26. In the consultation, Industry Canada sought comments from stakeholders on the considerations and criteria concerning the review of requests for the transfer or division of licences, as well as the subordinate licensing of spectrum licences.

Summary of Comments

27. The proposed criteria and considerations were generally supported by TELUS, MTS Allstream, Public Mobile, Eastlink and Xplornet. They were not supported by Bell Mobility, Rogers, Quebecor or Mobilicity.

28. Those who did not support the proposed criteria and considerations generally indicated that it was not necessary to introduce these, stating that the current review process, together with the Competition Bureau's review, is sufficient. Bell Mobility submitted that the existing Ministerial approval required for spectrum licence transfers and for the Competition Bureau oversight of mergers and acquisitions provides sufficient power to address any concerns about the impact of spectrum concentration on competition. Rogers questioned why Industry Canada would duplicate the review of factors considered by the Competition Bureau.

29. Other respondents suggested refinements to the proposal. These suggestions focused on two main areas of concern: (1) the way Industry Canada will account for spectrum licence holdings and spectrum concentration, and (2) the need for Industry Canada to consider regional variation. Eastlink, for example, suggested that a transferee's entire licence holdings should be taken into account, whereas SaskTel indicated that Industry Canada should take into account the number of facilities-based providers in a given region and that spectrum should be differentiated above and below 1 GHz. WIND also stated that Industry Canada should base its review on the number of operators in a region, but that this number should include Mobile Virtual Network Operators (MVNOs). A number of respondents indicated that Industry Canada should account for spectrum sharing agreements in its assessment. SaskTel noted that Industry Canada should take into account regional characteristics and consider rural areas differently than urban ones.

30. Additional comments were received related to the timing of Industry Canada's review of the spectrum licence transfer request, vis-à-vis the parties' finalization of their agreement. Xplornet indicated that a requirement to approach Industry Canada prior to the finalization of an agreement would be problematic, and suggested that Industry Canada allow parties to enter into binding agreements prior to seeking Industry Canada's approval of the transfer.

31. Most parties, whether they supported the proposal or not, submitted that if criteria were adopted, these should be objective and transparent.

Discussion

32. As noted in the introduction to this paper, reviews that may be conducted by Industry Canada under this Framework are separate from those conducted by the Competition Bureau, pursuant to the *Competition Act,* and therefore would not affect the Commissioner of Competition's review of mergers, agreements, or arrangements involving radio spectrum. Industry Canada's direct concerns are with respect to the impact of the proposed Licence Transfer or Prospective Transfer on the concentration of spectrum in a region, whereas the Bureau's concerns relate to its statutory mandate, as discussed above.

33. Spectrum concentration should be considered on a number of different levels. Overall spectrum concentration across commercial mobile spectrum bands is key to assessing the availability of spectrum for competitors. In-band concentration should also be considered, as each band can possess unique characteristics that are not or cannot be replicated in other bands. Thus, spectrum concentration within the band may influence competitors' ability to offer comparable services.

34. Assessment of spectrum concentration should take into account the access to spectrum through subordinate licensing and spectrum sharing agreements, as the secondary licensee is benefiting from additional spectrum to deploy.

35. The impact of a given level of spectrum concentration may differ from region to region, due to factors that impact spectrum scarcity (e.g. population density). Additionally, spectrum holdings among operators vary widely between regions. As such, an assessment of the impact of a Licence Transfer and the resulting spectrum concentration may vary across different regions.

36. All Licence Transfers require the approval of Industry Canada in order to be effected. As such, Industry Canada encourages potential Applicants to seek informal, non-binding advice prior to requesting a transfer of a spectrum licence. Information submitted in the course of obtaining this advice would be treated as confidential, subject to the provisions of the *Access to Information Act.*

37. Industry Canada recognizes that the cost savings and efficiency gains that can be realized through the use of spectrum sharing can enable more rapid deployment of next generation services to Canadians, including those in rural areas, and can also support investment and service innovation since next generation technologies require large amounts of spectrum. When sharing spectrum, Industry Canada expects that both parties to the Agreement would continue to have access to and make use of the spectrum. Accordingly, the nature of a sharing Agreement, including the planned use of the spectrum, is pertinent to a review of a request for a subordinate licence that is made pursuant to such an Agreement.

Decision

38. Industry Canada will examine the Licence holdings of the Applicants, both within the licensed spectrum band and across commercial mobile spectrum bands, in the relevant Licence area(s). All Licences held by the Applicants and their Affiliates will be considered in the analysis. Additionally, Industry Canada will consider other access to spectrum through any Agreements, including Licences held pursuant to a Deemed Transfer, as well as any pending transfers (which includes Licence Transfers that are currently under consideration or that may result from a Prospective Transfer).

39. In making its determination as to the impact of a Licence Transfer on the policy objectives of this Framework, Industry Canada will analyze, among other factors, the change in spectrum concentration levels (i.e. the amount of spectrum controlled by the Applicants in comparison to that held by all licensees) that would result from the Licence Transfer. In each case, Industry Canada will examine the ability of the Applicants and other existing and future competitors to provide services, given the post-transfer concentration of commercial mobile spectrum in the affected Licence area(s).

40. As part of the determination described above, Industry Canada will normally take into account the following factors:

(a) the current licence holdings of the Applicants and their Affiliates in the licensed area;
(b) the overall distribution of licence holdings in the licensed spectrum band and commercial mobile spectrum bands in the licensed area;
(c) the current and/or prospective services to be provided and the technologies available using the licensed spectrum band;
(d) the availability of alternative spectrum that has similar properties to the licensed spectrum band;
(e) the relative utility (e.g. above and below 1GHz) and substitutability of the licensed spectrum and other commercial mobile spectrum bands in the licensed area;
(f) the degree to which the Applicants and their Affiliates have deployed networks and the capacity of those networks;
(g) the characteristics of the region, including urban/rural status, population levels and density, or other factors that impact spectrum capacity or congestion; and
(h) any other factors relevant to the policy objectives outlined in this Framework that may arise from the Licence Transfer.

41. In cases of requests for subordinate Licences, pursuant to Agreements such as spectrum sharing Agreements, Industry Canada will also consider the nature of the Agreement and the planned use of the spectrum by each of the Applicants.

42. While Industry Canada will examine all Licence Transfers, those generally considered as having negligible or no impact — such as Licence Transfers made solely to effect an internal reorganization — will normally be approved.

43. Where a Licence Transfer or Prospective Transfer involves more than one Licence, Industry Canada may approve the transfer of only some of the licences requested and deny others.

44. Industry Canada's Spectrum Licence Procedures will be updated to include procedures related to the above review with respect to Licences for commercial mobile spectrum, in addition to the consideration of all of the other factors outlined in the Spectrum Licence Procedures, such as any applicable eligibility requirements and conditions of licence specific to the band in question.

45. Applicants will be required to provide any relevant documentation based on the above considerations and will be invited to make submissions along with the transfer application in order to permit Industry Canada to review Licence Transfers and Prospective Transfers in a timely fashion. Industry Canada may request further documents or information at any time prior to completing its review. The application and supporting materials will be treated confidentially, subject to the provisions of the *Access to Information Act*.

2.4 Deemed Transfers

46. Deemed Transfers have the effect of changing the control of a spectrum licence, either through a change in the ownership or the control of a licensee or through other means that would cause a person other than the licensee to control the spectrum licence.

47. In the consultation paper, Industry Canada proposed to treat any deemed spectrum licence transfer in the same fashion as other licence transfers. Given that the current conditions of licence require that Industry Canada approve all spectrum licence transfers, it was proposed that licensees would be required to notify Industry Canada prior to finalizing a deemed spectrum licence transfer. Such notifications would be treated as a spectrum licence transfer request to be reviewed by Industry Canada, as set out elsewhere in the consultation.

Summary of Comments

48. Of the 16 respondents to the consultation, nine supported Industry Canada's proposal relating to deemed spectrum licence transfers; Public Mobile suggested changes to the proposed definition; five had no comment; and Bell Mobility maintained its opposition to the overall proposal, including this element.

49. Some respondents supporting the proposal noted that it represents an important aspect of Industry Canada's overall approach to reviewing spectrum licence transfer requests.

50. Some respondents suggested clarifications to Industry Canada's proposal, relating to the following aspects: the definition of deemed spectrum licence transfers; the treatment of financial agreements as deemed spectrum licence transfers (in particular, certain respondents expressed their concerns about encountering delays when entering into standard financial agreements that might be reviewed); the form of Industry Canada's response to these transfers; and the relationship between prospective transfers and deemed spectrum licence transfers.

51. Rogers suggested changes to the wording of the definition of the deemed spectrum licence transfer, namely to remove the words "intent" and "effect" from the proposed wording, as these are difficult to establish in terms of the control of a licence.

52. Rogers also suggested that Industry Canada should clearly state whether it would approve or deny a deemed transfer, rather than using the hypothetical wording as set out in the consultation paper, and noted that the term "finalizing a deemed licence transfer" was imprecise.

53. Consistent with its overall opposition to the proposal, Bell Mobility submitted that Industry Canada should not do anything beyond the reviews performed by the Competition Bureau with respect to deemed transfers.

Discussion

54. The treatment of Deemed Transfers as Licence Transfers is important in order to ensure that all changes to the control of spectrum licences are reviewed in a consistent manner.

55. In response to comments provided by consultation respondents, the following clarifications are provided with respect to the treatment of Deemed Transfers:

(a) It is not Industry Canada's intention to hinder licensees from entering into financial arrangements made on normal commercial terms in the ordinary course of business. As such, Industry Canada will not generally require reviews relating to Deemed Transfers arising from entering into financial arrangements with parties whose business is primarily financing or lending. Industry Canada will instead focus its review on Deemed Transfers to any other licensees covered under this Framework, or to their Affiliates or to any of their respective agents or representatives.

(b) The form of approval of a Deemed Transfer will differ from that of a Transfer Request, where the prior Licence is revoked with consent and then reissued to the transferee by Industry Canada. In cases where the name of the licensee does not change, Industry Canada can provide the licensee either with written confirmation that the Licence remains valid (where the Deemed Transfer is approved) or with written notice that the Deemed Transfer is not approved and that the licensee will be in breach of their conditions of licence if the Deemed Transfer is implemented.

56. The inclusion of Deemed Transfers in the definition of a Licence Transfer is meant to capture a variety of situations where there is a change in the Control of a Licence or Control of a Licensee or Affiliate, such as:

(a) a transfer of shares of the Licensee or its Affiliates, including the purchase of shares, or effecting the conversion of shares;
(b) strategic alliances and joint ventures;
(c) an Agreement providing for exclusive use or excluding others from using licensed spectrum; or
(d) any Agreement that provides for "negative control," i.e. an Agreement preventing a licensee from entering into an Agreement with a competitor to transfer a Licence.

57. Industry Canada considers that certain types of influence can lead to a person having Control of a Licensee or Affiliate or Control of a Licence. These can include, among others, influence over the board of directors and/or operations of the Licensee and influence based on economic dependence of the Licensee.

Decision

58. Industry Canada will therefore adopt the following definition:

Deemed Transfer: Any immediate change to the Control of a Licence or Control of a Licensee or Affiliate that can be effected without making a Transfer Request, including a change made through the granting of any full or partial right or interest in a Licence through an Agreement.

59. Industry Canada's Spectrum Licence Procedures will be revised to incorporate the definition of a Deemed Transfer and to describe the form of approval or denial of such a transfer. Licensees will be required to apply for a review of a Deemed Transfer, and the application will be treated in accordance with the revised Spectrum Licence Procedures, using the criteria and considerations set out in this Framework. The application will be treated confidentially, subject to the provisions of the *Access to Information Act*.

60. In addition, the transfer and division condition of licence of existing and future spectrum licences subject to this Framework will now include a requirement to apply to Industry Canada for approval of a Deemed Transfer before any Agreement implementing the Deemed Transfer takes effect. The condition of licence will also state that it would be a breach of the licensee's conditions of licence to implement a Deemed Transfer that has not been approved by Industry Canada.

61. The condition of licence will also require the licensee to provide any documentation that Industry Canada requests related to this provision.

2.5 Prospective Transfers

62. In the consultation paper, Industry Canada proposed to introduce a notification requirement related to agreements that provide for the future transfer or division of either a spectrum licence or a subordinate licence, referred to as "prospective transfers." This requirement would be incorporated into a condition of licence, to be applied to all existing and subsequently issued spectrum licences.

63. Upon receipt of such notice, Industry Canada proposed to review the information provided by the parties with the intent of providing a non-binding preliminary assessment of the prospective transfer.

Summary of Comments

64. Of the 16 respondents to the consultation paper, six supported the addition of this condition of licence, seven opposed it, and three had no comments.

65. Among the respondents that supported the addition of this condition of licence, SaskTel stated that it should apply only to future, rather than existing, spectrum licences. Public Mobile suggested that Industry Canada explicitly indicate that where a licensee is or appears to be in breach of its condition of licence, a preliminary assessment of the transfer would be negative. Xplornet suggested that prospective transfers as set out in the consultation paper should be treated as deemed transfers.

66. Among those respondents opposing the addition of the proposed condition of licence, some indicated that it was not necessary, given that Industry Canada already has sufficient tools to regulate transfers and future transfers of spectrum licences. Additionally, some respondents reiterated their opposition to the addition of conditions of licence on existing licences before the expiry of their terms.

67. Further concerns were expressed as to the effects of Industry Canada's non-binding preliminary assessment of a prospective transfer, and some parties noted that deals may change substantially between the time the initial agreement is made and when it is completed. Rogers made the suggestion that the preliminary assessment should be at the option of the parties, rather than a mandatory requirement.

68. Some respondents also pointed out that the consultation paper does not clearly indicate at what point the parties to a prospective transfer would need to approach Industry Canada, given the proposed requirement to do so before a binding agreement has been reached. Further, Rogers pointed out that the parties contemplating a prospective transfer would, according to the proposal in the consultation paper, still be able to remain in a prospective transfer agreement, even where Industry Canada has provided a negative preliminary assessment.

Discussion

69. Although Agreements that provide for future Licence Transfers (e.g. option agreements, rights of first refusal or first offer, security agreements) do not immediately change the Control of a Licence or Control of a Licensee or Affiliate, Industry Canada is of the view that such Agreements can nevertheless impact both the competitive market for wireless services and the policy objectives set out in this Framework. Accordingly, Industry Canada is of the view that the Licence Transfers envisioned by these types of Agreements should be subject to Industry Canada review at the time that the Licensee enters into the Agreement.

70. Industry Canada also takes the position that, where it denies a Prospective Transfer, the policy objectives of this Framework do not support the licensee remaining in the Agreement that provides for such a transfer. However, Industry Canada also recognizes that parties may require a reasonable amount of time to either exit or reformulate an Agreement that is able to better meet this Framework.

71. Industry Canada considered the possibility of treating Prospective Transfers as Deemed Transfers. However, because Deemed Transfers and Prospective Transfers differ in terms of the timing of any change in the Control of a Licence or Control of a Licensee or Affiliate, Industry Canada is of the view that Prospective Transfers (which only have a future effect) should be treated separately from Deemed Transfers (which have an immediate effect). Similarly, Industry Canada's review of a Prospective Transfer should be considered as distinct from a review of a Licence Transfer, based on the factors set out in Section 2.3 above, and will be conducted at the relevant time.

72. Industry Canada will focus its review on Prospective Transfers, as provided for in Agreements between the licensee and any other licensees covered under this Framework and/or one of their Affiliates or any of their respective agents or representatives. Although various Agreements may result in a change to the Control of a Licence or Control of a Licensee or Affiliate at a future date, it is not Industry Canada's intention to capture Agreements made in the ordinary course of business with parties other than licensees that are subject to this Framework, e.g., security agreements incidental to standard financial arrangements with parties whose business is primarily financing or lending.

73. Industry Canada is of the view that information submitted as part of a review of a Prospective Transfer should be treated as confidential until such time as either the information has been made public by the Applicants or Industry Canada has reached a decision. However, this information is subject to the provisions of the *Access to Information Act*.

Decision

74. Industry Canada will adopt the following definition:

Prospective Transfer: A Licence Transfer (contemplated by an Agreement) that is to be or may be completed or that will take effect at a future date, whether or not the date is specified.

Licence Transfers include Deemed Transfers.

75. The transfer and division condition of licence for existing Licences subject to this Framework will be amended to require licensees to apply to Industry Canada for a review of a Prospective Transfer within 15 days of entering into any Agreement involving a Prospective Transfer to another licensee covered under this Framework or to one of its Affiliates or to any of their respective agents or representatives.

76. Industry Canada's Spectrum Licence Procedures will be revised to provide for reviews of Prospective Transfers, based on the criteria and considerations set out in this Framework. For the purposes of the review, the Prospective Transfer will be evaluated as though the future Licence Transfer arising from the relevant Agreement has been made. The resulting Licence Transfer will be considered in accordance with the revised Spectrum Licence Procedures, using the criteria and considerations set out in this Framework, and will be treated confidentially, subject to the provisions of the *Access to Information Act*.

77. Subject to paragraph 79 below, upon completing its review, Industry Canada will provide the licensee with a decision indicating that either the Prospective Transfer provided for in the Agreement meets the policy objectives set out in this Framework or that the Prospective Transfer does not meet these objectives. Further, the transfer and division condition of licence for existing Licences subject to this Framework will be amended to provide that in cases where Industry Canada has issued a decision indicating that the Prospective Transfer does not meet the policy objectives, it will be a breach of the condition of licence for a licensee to remain in the Agreement that provides for the Prospective Transfer for a period of more than 90 days from the date of the decision.

78. The condition of licence will also require the licensee to provide any documentation that Industry Canada requests related to this provision.

79. Any Licence Transfer resulting from an Agreement reviewed under this section will require a separate application to Industry Canada at the time that the parties wish to make the transfer. The Licence Transfer will be reviewed, as set out in this Framework, at that time.

2.6 Public or Confidential Review

80. In the consultation, Industry Canada asked whether its current process to review spectrum licence transfer requests should be modified to allow for public notification/consultation before a transfer has been approved.

Summary of Comments

81. MTS Allstream, Public Mobile, Terrestar, Xplornet, and Dr. Michael McNally, et al. indicated that Industry Canada should introduce a public announcement of spectrum licence transfer requests awaiting Industry Canada's approval in order to increase the transparency of the approval process. Some respondents indicated that publication of only basic data related to the transfer may be appropriate.

82. However, many other respondents noted that the details of spectrum licence transfers are commercially sensitive and that significant harm could result from the publication of spectrum licence transfer requests before these have been approved by Industry Canada.

Discussion

83. After assessing the submissions received, Industry Canada recognizes that parties may regard information submitted with respect to Licence Transfers or Prospective Transfers as confidential. As such, Industry Canada is of the view that requests for a review submitted by Applicants under this Framework should be treated confidentially until such time as the information has been made public by the Applicants or Industry Canada has reached a decision.

84. Industry Canada currently maintains a database of spectrum licences on its website, which is updated once a spectrum licence has been transferred or divided or once a subordinate licence has been issued. In addition to this information, stakeholders may benefit from the publication of Industry Canada's rationale for any approval or denial of a Licence Transfer or Prospective Transfer. Industry Canada's decisions do not create binding precedent as to future decisions. However, publication of this information may provide guidance as to the treatment of future applications for Licence Transfers and Prospective Transfers.

85. Additionally, Industry Canada notes that potential Applicants may benefit from receiving informal advice regarding a Licence Transfer, Prospective Transfer, or other matters under this Framework prior to finalizing any Agreement or to making a Transfer Request.

Decision

86. Material submitted by Applicants under this Framework will be treated as confidential, subject to the requirements of the *Access to Information Act*, until such time as the Applicants release the information publicly or Industry Canada publishes a decision.

87. Industry Canada will normally publish a summary of its decisions with respect to Licence Transfers and Prospective Transfers. Although they do not create binding precedents, these summaries of decisions may provide guidance as to the treatment of future Licence Transfers and Prospective Transfers.

88. Industry Canada encourages parties that are contemplating entering into Agreements related to transfers of spectrum licences to seek informal, non-binding advice prior to doing so. Information submitted in the course of obtaining this advice will be treated as confidential, subject to the provisions of the *Access to Information Act*, and no information relating to these requests will be published.

2.7 Timelines

89. In the consultation, Industry Canada proposed to provide either approval of a spectrum licence transfer request or advice that the request would be subject to a detailed review, as set out in the consultation paper, within four weeks of receipt of an application. Additionally, Industry Canada indicated that a detailed review would be completed within 16 weeks of receipt of all required information for a total time of 20 weeks. These timelines were subject to variation in certain instances — for example, if Industry Canada requested further information or if further time was required in order to respond to specific concerns.

Summary of Comments

90. While three respondents indicated that the timelines proposed were reasonable, and Terrestar suggested extending the timelines to allow for a public consultation process, the majority of respondents providing comments on this issue indicated that the proposed timelines should be shortened to between three and four weeks. In particular, a number of respondents indicated that the timeline for a review of a request for a transfer should be harmonized with the timelines established by the Competition Bureau for its reviews of mergers.

Discussion

91. Industry Canada recognizes the importance of timely regulatory decisions in the quickly changing telecommunications environment. As such, after considering the comments provided by respondents in the consultation and given that the initial review proposed in the consultation paper will not be required, Industry Canada believes that the timeline for a review and approval or denial of a Licence Transfer or a Prospective Transfer should be shortened to 12 weeks from the date that a request and all required information has been received.

92. A 12-week timeline for review is consistent with those time frames established in various international jurisdictions, which range from 30 days to six months.

93. Industry Canada notes that certain circumstances could arise that would lengthen the time required to review a Licence Transfer or a Prospective Transfer. For example, further information might be required from the Applicants, or the Applicants could require additional time to respond to specific concerns raised. Where the issues that are raised in a review of a Licence Transfer or a Prospective Transfer are complex, Industry Canada may require additional time to consider these.

Decision

94. Industry Canada's Spectrum Licence Procedures will be revised to reflect that reviews of Transfer Requests, Deemed Transfers, and Prospective Transfers will normally be completed within 12 weeks from the time of receipt of all required information. This timeline may vary due to requests for further information, where the Applicants require additional time to respond to specific concerns raised, or where the complexity of the issues raised in the course of a review demands a longer period of time in order to consider the effects of the Licence Transfer or the Prospective Transfer.

2.8 Next Steps

95. Industry Canada will publish notice of amendments to the Spectrum Licence Procedures and of amendments to conditions of licence for Licences subject to this Framework. After that date, Industry Canada may provide guidelines on the interpretation of matters under the Spectrum Licence Procedures, as questions arise.

From: Alerte-Info-Alert [mailto:Alerte-Info-Alert@pmo-cpm.gc.ca]
Sent: June-04-13 9:36 AM
To: Alerte-Info-Alert
Subject: Message of the Day - Supporting Canadian Businesses- More Choice, Lower Prices

Standing Up For Canadian Consumers -

More Choice, Lower Prices

Twitter link: http://goo.gl/aDPT0

Today, the Harper Government announced decisions to further promote competition in the Canadian wireless telecommunications industry to give Canadians more choices at lower prices.

- The Harper Government will continue to put Canadian consumers first.
- Our Government is committed to promoting at least four wireless providers in every region of the country so that Canadian consumers benefit from greater competition.
- Today, Minister Paradis announced decisions to further promote competition in the Canadian wireless telecommunications industry to give Canadians more choices at lower prices.
- The Minister announced that:
  - **Spectrum set aside for new entrants was not intended to be transferred to incumbents. Therefore, TELUS' application to transfer Mobilicity's spectrum licences will not be approved.**
  - Improvements to the policy on spectrum licence transfers will be published in the coming weeks. **Going forward, proposed spectrum transfers that result in undue spectrum concentration – and therefore diminish competition – will not be permitted.**

Government of Canada Gouvernement du Canada

Canada

Canada News Centre

Industry Canada Industrie Canada

Harper Government Releases Spectrum Licence Transfer Framework

CANADA'S ECONOMIC ACTION PLAN

Visit actionplan.gc.ca to learn more

Ottawa, June 28, 2013—The Honourable Christian Paradis, Minister of Industry, today announced the release of the spectrum licence transfer framework to further promote competition in Canada's wireless telecommunications market and to deliver cutting-edge technologies to Canadian families at affordable prices.

"The Harper Government is committed to promoting at least four wireless providers in every region of the country to support greater competition in the market," said Minister Paradis. "We are working to provide Canadian families with access to the latest technology at better prices."

As announced on June 4, 2013, all spectrum transfer requests will be reviewed, and those that would result in undue spectrum concentration—and therefore diminish competition—will not be permitted. Decisions on transfer requests will be made on a case-by-case basis and will be issued publicly to increase transparency.

The framework, which is based on consultations with Canadians, will provide greater clarity on how spectrum licence transfer requests will be reviewed. It will apply to commercial mobile spectrum licences and all licence transfers, including prospective transfers that could arise from options and other agreements. A licensee will be required to seek a review within 15 days of entering into any agreement that could lead to a prospective transfer. Industry Canada will review a prospective transfer as though the future licence transfer that could arise from the agreement has been made.

"Important progress has been made, and Canadians can count on our government to continue to promote lower prices and increased choice for their families," added Minister Paradis. "The Harper Government will not hesitate to use any and every tool at its disposal to protect Canadian consumers and to promote competition."

Spectrum is a valuable resource, which the government manages for the benefit of all Canadians. Industry Canada has developed this framework to support the Harper Government's policy objective to maximize the economic and social benefits that Canadians derive from the use of spectrum.

For more detailed information, please refer to the spectrum licence transfer framework.

For further information (media only), please contact:

Margaux Stastny
Director of Communications
Office of the Honourable Christian Paradis
Minister of Industry

613-995-9001

Media Relations
Industry Canada
613-943-2502

E-mail to a Friend

Date Modified: 2013-06-28

This is Exhibit ....C.......... referred to in ...
affidavit of ....James Riley..........
sworn before me, this .....19th...........
day of ....October.................... ...2013

......David Moore................................
A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. T-1295-13

FEDERAL COURT

TELUS COMMUNICATIONS COMPANY

Applicant

- and -

ATTORNEY GENERAL OF CANADA, BELL MOBILITY INC., BRAGG COMMUNICATIONS INC. carrying on business as EASTLINK, DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC. carrying on business as MOBILICITY, GLOBALIVE WIRELESS MANAGEMENT CORP. carrying on business as WIND, MTS INC., ALLSTREAM INC., PUBLIC MOBILE INC., ROGERS COMMUNICATIONS INC., SASKATCHEWAN TELECOMMUNICATIONS and SHAW COMMUNICATIONS INC.

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The applicant requests that this application be heard at Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules*, 1998, and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this Notice of Application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: JUIL JUL 29 2013

Issued by:

C. MARTIN
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:
Thomas D'Arcy McGee Building
90 Sparks Street
Ottawa, ON K1A 0H9

TO:

Attorney General of Canada
John H. Sims Q.C.
Deputy Attorney General of Canada
Department of Justice
234 Wellington Street, East Tower
Ottawa, ON K1A 0H8

AND TO:

Bragg Communications Inc.
carrying on business as EastLink
c/o Denise Heckbert
Manager, Wireless Regulatory, EastLink
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Data & Audio-Visual Enterprises Wireless Inc.
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Tel: (416) 408 6050
gary.wong@mobilicity.ca

Globalive Wireless Management Corp.
carrying on business as WIND
c/o Lisa Goetz
207 Queen's Quay West, Suite 710
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lisagoetz@globalive.com

Bell Mobility Inc.
c/o Mirko Bibic
SVP, Regulatory and Government Affairs
160 Elgin Street, 19th Floor
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Saskatchewan Telecommunications
c/o John Meldrum Q.C.
Vice President, Corporate Counsel and Regulatory Affairs
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john.meldrum@sasktel.com

Shaw Communications Inc.
c/o Jean Brazeau
Vice President, Telecommunications
630 - 3rd Ave SW, Suite 900
Calgary, AB T2P 4L4

Tel: (403) 750-4500
Fax: (403) 750-4501
Regulatory@sjrb.ca

APPLICATION

This is an application for judicial review of the decision of the Minister of Industry and Industry Canada (collectively, the "Minister") entitled *Framework Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences for Commercial Mobile Spectrum*, DGSO-003-13, published 28 June 2013 (the "Licence Transfer Policy Framework" or "LTP Framework"), in which the Minister purports to add a condition to existing and future spectrum licences, including Advanced Wireless Spectrum ("AWS") licences, requiring that an application be made to the Minister for approval of a newly-defined class of transactions referred to as "Deemed Transfers" before any agreement implementing a "Deemed Transfer" takes effect.

The Applicant makes application for:

1. An order declaring:

    (a) that the Minister is estopped from implementing the LTP Framework insofar as it purports to impose a condition in AWS licences requiring that an application be made to the Minister for approval of "Deemed Transfers" of AWS licences, and from amending AWS licences to include such a condition;

    (b) that the Minister did not have jurisdiction to adopt the LTP Framework insofar as it purports to require that an application be made to the Minister for approval of "Deemed Transfers" of AWS and other spectrum licences;

2. An order quashing the LTP Framework insofar as it purports to impose a condition in AWS and other spectrum licences requiring that an application be made to the Minister for approval of "Deemed Transfers" of such licences;

3. An order prohibiting the Minister from implementing the LTP Framework insofar as it purports to impose a condition in AWS licences and other spectrum licences requiring that an application be made to the Minister for approval of "Deemed Transfers" of such licences, and from amending AWS and other spectrum licences to include such a condition;

4. Such further and other relief as to this Honourable Court seems just; and

5. The costs of this application.

The grounds for the Application are:

Facts

1. In 2008, the Applicant participated as a bidder in an auction of certain radio frequency spectrum conducted by the Minister (the "AWS Auction") and was successful in winning the right to a licence authorizing use of certain radio frequency spectrum to deliver wireless telecommunications services to the public.

2. The AWS Auction was conducted pursuant to procedures established by the Minister and published in *Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range*, dated November 2007 (the "AWS Framework").

3. In the AWS Framework, the Minister announced that certain spectrum would be set aside for "new entrants" and would not be available to incumbent operators. The Minister said that licences obtained through the set-aside would not be transferable to companies that do not meet the criteria of a new entrant for a period of 5 years from the date of issuance of the licences. (This latter policy is referred to herein as the "Moratorium".)

4. In the AWS Framework, the Minister also said that "*The policy decisions contained in this paper are final.*"

5. The Respondents Mobilicity, WIND and Public Mobile Inc. qualified as new entrants and were successful in bidding for set-aside spectrum. The Applicant, which is an incumbent operator and as such was not eligible to bid for set-aside spectrum, was successful in bidding for other spectrum, as were the other Respondents (apart from the Attorney General of Canada).

6. Consistent with the Moratorium, the AWS licences issued to successful bidders by the Minister contained the following term:

> *2. Licence Transferability and Divisibility*
>
> *Licences acquired through the set-aside of spectrum (as defined in Policy Framework for the Auction for Spectrum Licences for Advanced Wireless Services and other Spectrum in the 2 GHz Range) 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 5 years from the original date of issuance.*

7. In the AWS Framework and the AWS licences the Minister made clear and unambiguous representations about the Moratorium, and specifically the transactions to which it would apply, its duration, and the finality of his decisions on these matters. These representations were intended to influence the approach that the Applicant, new entrants and other bidders adopted to the AWS Auction and in planning their affairs during the five years thereafter. The Applicant in fact relied on these representations in deciding which licences for which it would bid during the AWS Auction, the amount of spectrum for which it would bid, and the prices it would offer. It has also relied on the representations in planning its affairs since the AWS Auction.

8. Notwithstanding these representations, on 28 June 2013 the Minister published the LTP Framework and purported to impose a requirement that his advance approval be obtained by existing and future licensees, including AWS licensees, for a class of transactions described as "Deemed Transfers".

9. In the LTP Framework, the Minister adopted the following definition of Deemed Transfer:

> *"Any immediate change to the Control of a Licence or Control of a Licensee or Affiliate that can be effected without making a Transfer Request, including a change made through the granting of any full or partial right or interest in a Licence through an Agreement."*

10. The result of the new policy, if implemented, will be that changes in control of AWS licensees who received spectrum through the set-aside will no longer be permitted after the expiry of the Moratorium except with the Minister's approval, contrary to the clear,

unambiguous and unqualified representations the Minister made in the AWS Framework and in the AWS licences that the Moratorium would expire after five years.

11. Because of the representations the Minister made and the reliance placed upon them by the Applicant and others, the Minister is now estopped from implementing the LTP Framework insofar as it purports to require that an application be made to the Minister for approval of "Deemed Transfers" of AWS licences.

12. Furthermore, the LTP Framework interferes unlawfully with vested rights. Under the terms of the AWS Framework and the AWS licences, new entrants and incumbent operators, including the Applicant, acquired a vested right to enter into arrangements that would result in a change of control of new entrants after five years. The Minister did not have the statutory power to interfere with those vested rights. Alternatively, sthe Minister's decision to exercise his powers in a way that interfered with those vested rights was an unreasonable exercise of his discretion.

13. Furthermore, the Minister did not have statutory authority to require that an application be made to the Minister for approval of "Deemed Transfers" of AWS and other spectrum licences. Section 11 of the *Radiocommunication Regulations* made by the Governor in Council makes it a term of every spectrum licence that the licence may not be transferred or assigned without the authorization of the Minister. Section 11 does not impose a similar approval requirement in respect of changes of control of licensees. In the LTP Framework, the Minister purports to introduce the concept of "Deemed Transfers" and by that device to bring changes of control within the scope of his authority over transfers under section 11. This is tantamount to amending the regulation, which the Minister has no power to do. The provisions of the LTP Framework purporting to introduce the concept of "Deemed Transfers" and to require that an application be made to the Minister for approval of "Deemed Transfers" of AWS and other spectrum licences are therefore *ultra vires* and unlawful.

Parties

14. The Applicant and the Respondents other than the Attorney General of Canada each participated in the AWS Auction, were each issued AWS licences, and each participated in the proceeding that led to the adoption of the LTP Framework.

Statutes and Regulations

15. *Radiocommunication Act*, R.S.C. 1985, c. R-2, as amended, s. 6.

16. *Radiocommunication Regulations,* SOR/96-484, s. 11.

17. *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, ss. 18 and s. 18.1.

The Application will be supported by the following material:

1. The affidavit of an affiant to be identified, to be sworn;

2. The record before the Minister that led to the adoption of the AWS Framework and the LTP Framework; and

3. Such other material as counsel may advise and the Court permit.

The Applicant requests pursuant to Rule 317 that the Attorney General send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Minister to the Applicant and to the Registry:

1. All materials in the possession of Industry Canada or the Minister in connection with the decision that led to the adoption of the AWS Framework and the LTP Framework.

July 29, 2013

Nelligan O'Brien Payne LLP
Barristers & Solicitors
1500-50 O'Connor Street
Ottawa, ON K1P 6L2

Christopher Rootham
Tel: (613) 231-8311
Fax: (613) 788-3667
christopher.rootham@nelligan.ca

Solicitors for the Applicant

This is Exhibit D referred to in the

affidavit of James Riley

sworn before me, this 19th

day of October 2013

Dan I. [illegible]

A COMMISSIONER FOR TAKING AFFIDAVITS

11.2

(f) *Expenses* – (i) all reasonable and documented expenses of each of the Collateral Agent and the Purchasers incurred up to and including the relevant Subsequent Tranche Closing Date in connection with this Agreement, the DIP Notes and the CCAA Proceeding, including, without limitation, reasonable and documented legal fees of counsel to the Collateral Agent and the Purchasers; shall have been paid in full from the proceeds of issuance of the applicable Subsequent Tranche of DIP Notes, as directed by the Issuer; and (ii) all reasonable and documented expenses of each of the Bridge Notes Agent and the Bridge Note Purchasers incurred up to and including the relevant Subsequent Tranche Closing Date for the applicable Subsequent Tranche of DIP Notes in connection with Bridge Notes, including, without limitation, reasonable and documented legal fees of counsel to the Bridge Notes Agent and the Bridge Notes Purchasers shall have been paid in full from the proceeds of issuance of the applicable Subsequent Tranche of DIP Notes, as directed by the Issuer;

(g) *Reps and Warranties, etc.* – (i) all representations and warranties contained in this Agreement and the other DIP Documents remain true and correct in all material respects as of the relevant Subsequent Tranche Closing Date (unless stated to relate to a specific earlier date, in which case, such representations and warranties shall have been true and correct in all material respects as of such earlier date); (ii) the Issuer and the Guarantors shall have complied with all of their covenants under this Agreement; (iii) no Default or Event of Default shall have occurred and be continuing on the relevant Subsequent Tranche Closing Date or after giving *pro forma* effect to the issuance of the applicable Subsequent Tranche of DIP Notes on the relevant Subsequent Tranche Closing Date; (iv) no Material Adverse Effect shall have occurred after the date of this Agreement and be continuing on the relevant Subsequent Tranche Closing Date; and (v) the issuance of the applicable Subsequent Tranche of DIP Notes shall not violate any applicable law, judgment or order of any court of competent jurisdiction, and the Purchasers shall have received a certification from an officer of the Issuer as to each of the foregoing items (i)-(v);

(h) *Approved Transaction and Restructuring Alternative* – (i)(A) the Issuer and the Guarantors shall have determined and presented to the Purchasers the proposed Restructuring Alternative on or prior to October 24, 2013 or such other date as the Issuer and the Purchasers may agree or (B) commenced the Restructuring Alternative on or prior to October 24, 2013, or such other date as the Issuer and the Purchasers may agree, with the prior consent of the Purchasers or (C) if requested by the Purchasers, commenced the Restructuring Alternative on or prior to October 24, 2013 or such other date as the Issuer and the Purchasers may agree, (ii) the Purchasers shall be satisfied with an Approved Transaction on or before November 12, 2013, or such other date as the Issuer and the Purchasers may agree, or the Purchasers shall be satisfied with the status of the Restructuring Alternative; and (iii) there shall be no adverse change in the status of any Approved Transaction or Restructuring Alternative since the immediately preceding Closing Date; and

13

(f) (i)(A) the Issuer and the Guarantors shall have determined and presented to the Purchasers the proposed Restructuring Alternative on or prior to October 24, 2013 or such other date as the Issuer and the Purchasers may agree or (B) commenced the Restructuring Alternative on or prior to October 24, 2013, or such other date as the Issuer and the Purchasers may agree, with the prior consent of the Purchasers or (C) if requested by the Purchasers, commenced the Restructuring Alternative on or prior to October 24, 2013 or such other date as the Issuer and the Purchasers may agree, and (ii) the Issuer and the Purchasers shall have agreed upon a Sale Transaction, Change of Control or other transaction (including a Plan) that is acceptable to the Purchasers (each, an "**Approved Transaction**") by November 12, 2013, or such other date as the Issuer and the Purchasers may agree, or the Purchasers shall be satisfied with the status of the Restructuring Alternative.

(g) The Issuer and the Guarantors shall maintain at all times adequate insurance coverage of such kind and in such amounts and against such risks as is prudent for a business of an established reputation with financially sound and reputable insurers in coverage and scope acceptable to the Purchasers, with appropriate endorsements in favour of the Collateral Agent.

(h) The Issuer or the CRO shall deliver to each of the Purchasers and/or such representatives as may be reasonably designated by the Purchasers:

(i) a refreshed Cash Flow Forecast in respect of the 13-week period beginning on the last day of the then applicable Current Cash Flow Period, which shall be delivered no less than ten (10) Business Days prior to the end of such Current Cash Flow Period and shall be acceptable to the Purchasers no less than five (5) Business Days prior to the end of such 13-week period;

(ii) on the fourth Business Day of every second week, a report as to the Issuer's and each Guarantor's actual cash flows for the immediately preceding two-week period, accompanied by a variance analysis explaining how and why actual results for such immediately preceding two-week period varied from the applicable weeks in the Cash Flow Forecast;

(iii) on the first Business Day of each month, a monthly financial report (including a balance sheet, a statement of changes in working capital and any other financial statements produced by the Issuer and approved by the Issuer's board of directors) with respect to the Issuer and the Guarantors;

(iv) on the first Business Day of each week, updates and plans from the Issuer's advisors or the CRO regarding any Potential Transaction or Restructuring Alternative;

This is Exhibit ....E.... referred to in ...
affidavit of ....James Riley....
sworn before me, this ....19th....
day of ....October.... ..2013

....David Moore....
A COMMISSIONER FOR TAKING AFFIDAVITS

Mobilicity Summary of Holders

(C$ in millions)	Total Debt Holdings w/ PIK $	Total Debt Holdings w/ PIK %	First Lien Notes $	First Lien Notes % of tranche	Total Second Lien $	Total Second Lien % of tranche	Second Lien[2] DIP $	Second Lien[2] DIP % of tranche	Second Lien[2] Bridge Loan $	Second Lien[2] Bridge Loan % of tranche
Group 1										
Maxim Asset Management	$43.7	7.6%	[illegible]	9.9%	$24.4	33.3%	$10.0	33.3%	$14.4	33.3%
Stoic Dynamic	$55.0	9.6%	$25.7	8.1%						
CI Investments	$69.0	12.1%	[illegible]	13.0%	$24.4	33.3%	$10.0	33.3%	$14.4	33.3%
West Face	$15.0	2.6%	[illegible]	7.5%						
Guardian Capital	$45.9	8.0%	[illegible]	4.6%	$24.4	33.3%	$10.0	33.3%	$14.4	33.3%
US Private Equity Buyer	$23.1	3.4%	-	-	-	-	-	-	-	-
Total Maxim/CI Group/West Face	$259.7	45.4%	[illegible]	42.2%	$73.3	100.0%	$30.0	100.0%	$43.3	100.0%
Shaw & Quadrangle	$137.1	24.0%	-	-	-	-	-	-	-	-
Total Group 1 + Quadrangle	$396.8	69.4%	[illegible]	43.2%	$73.3	100.0%	$30.0	100.0%	$43.3	100.0%
Group 2										
Catalyst	$63.0	11.0%	[illegible]	32.3%						
Alkarez Domenic	$20.0	3.5%	[illegible]	10.3%						
Putnam Investments	$14.0	2.4%	[illegible]	7.2%						
Manhattan Financial	$39.1	6.8%	[illegible]	7.2%						
Anson Hill	$13.0	2.3%	-	-	-	-	-	-	-	-
Total Catalyst/Other Group	$149.1	26.1%	[illegible]	56.9%	-	-	-	-	-	-
Total[1]	$545.9	95.4%	[illegible]	100.0%	$73.3	100.0%	$30.0	100.0%	$43.3	100.0%
Total Tranche (incl Equity)	$572.0	100.0%	[illegible]	100.0%	$73.3	100.0%	$30.0	100.0%	$43.3	100.0%

(C$ in millions)	Total Senior Unsecured w/ PIK[3] $	%	Total Senior Unsecured w/o PIK $	%	Senior Unsecured Notes w/ PIK[3] $	% of tranche	% of total Sr. Unsec	Senior Unsecured Notes w/o PIK $	% of tranche	% of total Sr. Unsec
Group 1										
Maxim Asset Management	[illegible]	13.9%	$22.4	14.5%	$30.3	23.6%	17.6%	$22.4	23.8%	14.5%
Stoic Dynamic	$19.3	7.5%	$11.1	7.2%	$19.3	11.3%	7.5%	$11.1	11.8%	7.2%
CI Investments	-	-	-	-	-	-	-	-	-	-
West Face	-	-	-	-	-	-	-	-	-	-
Guardian Capital	$12.5	4.8%	[illegible]	4.6%	$12.5	7.3%	4.8%	[illegible]	7.5%	4.6%
US Private Equity Buyer	[illegible]	11.9%	[illegible]	11.4%	[illegible]	18.6%	11.9%	[illegible]	18.6%	11.4%
Total Maxim/CI Group/West Face	[illegible]	39.5%	$58.4	37.7%	[illegible]	61.3%	39.5%	$58.4	61.2%	37.7%
Shaw & Quadrangle	$95.5	36.4%	[illegible]	38.7%	-	-	-	-	-	-
Total Group 1 + Quadrangle	$198.0	75.9%	[illegible]	76.4%	[illegible]	61.3%	39.5%	$58.4	61.2%	37.7%
Group 2										
Catalyst	-	-	-	-	-	-	-	-	-	-
Alkarez Domenic	-	-	-	-	-	-	-	-	-	-
Putnam Investments	-	-	-	-	-	-	-	-	-	-
Manhattan Financial	[illegible]	9.0%	[illegible]	9.2%	[illegible]	13.8%	9.0%	$14.3	15.0%	9.2%
Anson Hill	$13.0	5.0%	[illegible]	4.8%	$13.0	7.6%	5.0%	[illegible]	7.8%	4.8%
Total Catalyst/Other Group	[illegible]	14.0%	$21.7	14.0%	[illegible]	21.4%	14.0%	[illegible]	22.8%	14.0%
Total[1]	[illegible]	90.0%	[illegible]	90.4%	[illegible]	82.7%	53.6%	[illegible]	84.0%	51.7%
Total Tranche (incl Equity)	[illegible]	100.0%	[illegible]	100.0%	[illegible]	100.0%	65.0%	[illegible]	100.0%	61.3%

(C$ in millions)	Senior Unsecured Converts w/ PIK[3] $	%	% of total Sr. Unsec	Senior Unsecured Converts w/o PIK $	%	% of total Sr. Unsec	Subordinate Unsecured w/ PIK[3] $	%	Subordinate Unsecured w/o PIK $	%	Equity $	%
Group 1												
Maxim Asset Management	-	-	-	-	-	-	-	-	-	-	-	-
Stoic Dynamic	-	-	-	-	-	-	-	-	-	-	-	-
CI Investments	-	-	-	-	-	-	-	-	-	-	-	-
West Face	-	-	-	-	-	-	-	-	-	-	-	-
Guardian Capital	-	-	-	-	-	-	-	-	-	-	-	-
US Private Equity Buyer	-	-	-	-	-	-	-	-	-	-	-	-
Total Maxim/CI Group/West Face	-	-	-	-	-	-	-	-	-	-	-	-
Shaw & Quadrangle	$95.5	100.0%	36.4%	$39.9	100.0%	38.7%	$41.6	100.0%	$35.0	100.0%	$243.1	97
Total Group 1 + Quadrangle	$95.5	100.0%	36.4%	$39.9	100.0%	38.7%	$41.6	100.0%	$35.0	100.0%	$243.1	97
Group 2												
Catalyst	-	-	-	-	-	-	-	-	-	-	-	-
Alkarez Domenic	-	-	-	-	-	-	-	-	-	-	-	-
Putnam Investments	-	-	-	-	-	-	-	-	-	-	-	-
Manhattan Financial	-	-	-	-	-	-	-	-	-	-	-	-
Anson Hill	-	-	-	-	-	-	-	-	-	-	-	-
Total Catalyst/Other Group	-	-	-	-	-	-	-	-	-	-	-	-
Total[1]	$95.5	100.0%	36.4%	$39.9	100.0%	38.7%	$41.6	100.0%	$35.0	100.0%	$243.1	97
Total Tranche (incl Equity)	$95.5	100.0%	36.4%	$39.9	100.0%	38.7%	$41.6	100.0%	$35.0	100.0%	[illegible]	100

Note

(1) Total amount differs from total tranche due to portions of the tranche held by unknown parties

(2) Ownership of Second Lien debt is assumed to be equally split between Maxim Asset Management, CI Investments, and Guardian Capital

(3) PIK amount outstanding as of 3/31/14

This is Exhibit ....F......... referred to in the
affidavit of ......James Riley..........
sworn before me, this ......19th........................
day of .....October....................... . . .2013

....
A COMMISSIONER FOR TAKING AFFIDAVITS

Bellmore & Moore
Barristers & Solicitors

Brian P. Bellmore, B.Sc., LL.B., LL.M.
David C. Moore, B.Sc., LL.B.
Karen M. Mitchell, B.A., LL.B.
Kenneth G.G. Jones, LL.B.
Diana M. Soos, B.Sc., M.B.A., LL.B.

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Fax: 416-581-1279

October 18, 2013

Leanne Williams
John Porter
Thornton Grout Finnigan LLP
Suite 3200, 100 Wellington Street West
P. O. Box 329, Toronto-Dominion Centre
Toronto, ON M5K 1K7

Re: *Companies' Creditors Arrangement Act* proceedings involving 8440522 Canada Inc., Data & Audio-Visual Enterprises Wireless Inc., and Data & Audio-Visual Enterprises Holdings Inc. (the "Debtors")

Dear Ms. Williams and Mr. Porter:

Despite the concerns previously explained to you, Catalyst has decided to provide a copy of the enclosure contained in my October 9, 2013 letter to the Mobilicity Group and the Court. We intend to do so forthwith.

In addition, further to our letter of October 9, 2013 and the meeting earlier this week between representatives of the Monitor and our client, we write to set out our client's proposed framework for a fair and appropriate DIP financing solicitation process to be administered by the Monitor. The below framework assumes that the process is commenced on Friday, October 25, 2013.

1. October 25, 2013 - Monitor to circulate a short summary document to all parties who might have an interest in providing DIP financing to the debtors that briefly explains the opportunity and the solicitation process, together with a form of non-disclosure agreement;

2. October 28, 2013 to November 4, 2013 - interested parties who have signed a non-disclosure agreement to be given access to a data room containing (a) substantially equivalent information to that made available to the existing DIP lenders in connection with the DIP Note Purchase and Guarantee Agreement, and (b) a form of DIP Loan Agreement for use by interested parties in submitting a DIP financing offer;

3. November 4, 2013 - interested parties to submit to the Monitor a DIP financing offer on a sealed and confidential basis, which offer shall be based on the form of DIP Loan Agreement in

the data room and must contemplate repayment of all advances made under the existing DIP Note Purchase and Guarantee Agreement, if any, to the date of funding;

4. November 4, 2013 to November 8, 2013 - Monitor to consider DIP financing offers received and contrast the terms of such offers to the terms of the existing DIP Note Purchase and Guarantee Agreement; and

5. November 8, 2013 - Monitor to deliver to the Mobilicity Group a copy of all offers received before the offer deadline, together with an executed and final (i.e., not draft) report in which it summarizes the results of the DIP solicitation process and makes a recommendation with respect to the DIP financing offers received.

In our view it is critical to the fairness and integrity of this process that all interested parties be provided with access to the same information, and that all offers be submitted and dealt with on a confidential basis. It is for this reason that the above framework contemplates (i) the establishment of a data room that makes the same information available to all interested parties, and (ii) the submission of sealed bids to the Monitor only (as the debtors have disclosure obligations under the existing DIP Note Purchase and Guarantee Agreement and other financing agreements) and the making by the Monitor of a recommendation at the time it discloses the offers to the Mobilicity Group.

We welcome your thoughts on this framework and would be pleased to discuss at your earliest convenience.

Yours very truly,

BELLMORE & MOORE

David C. Moore

Per: David C. Moore

This is Exhibit ......G........ referred to in the

affidavit of ......James Riley..........

sworn before me, this ......19th..........................

day of ......October........................ 2013

.......David Ucon..

A COMMISSIONER FOR TAKING AFFIDAVITS

Bellmore & Moore

Barristers & Solicitors

Brian P. Bellmore, B.Sc., LL.B., LL.M.
David C. Moore, B.Sc., LL.B.
Karen M. Mitchell, B.A., LL.B.
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Tel: 416-581-1818
Fax: 416-581-1279

VIA EMAIL

June 19, 2013

Orestes Pasparakis
Norton Rose Canada LLP
Toronto-Dominion Centre, TD South Tower
79 Wellington Street West, Suite 2300
P.O. Box 128
Toronto, ON M5K 1H1

Dear Mr. Pasparakis:

Re: The Catalyst Capital Group Inc v. Data & Audio-Visual Enterprises Wireless Inc. et al.
Court File No.: 13-CV-10016-00CL
Our File No.: CATA407

---

1. The week before last, Catalyst reaffirmed its willingness to extend financing to Mobilicity and delivered a term sheet for that purpose, which outlined the general terms and conditions of a new investment of $100,000,000. In the letter which accompanied the term sheet, Catalyst stated:

> "Contemporaneously with the execution and delivery of definitive documentation, satisfaction of all conditions and closing of the transactions as outlined in the POA Term Sheet, Catalyst will withdraw its current application for, amongst other things, oppression remedies under the OBCA commenced in the Ontario Superior Court of Justice or any related applications against all parties named under the applications."

2. On June 6, 2013, in an email to Jon Levin, Mr Walied Soliman responded on behalf of Mobilicity, stating, *inter alia*, that "...we are currently in exclusivity with Telus and therefore cannot entertain these term sheets <u>at this time</u> [underlining added]."

3. Mr. Levin responded in an email on June 6, 2013 as follows:

> "Thank you for your email. I would appreciate your directing me to the provisions that continue to hold you subject to exclusivity. Also, I wonder whether you have

asked Telus if it would waive any continuing exclusivity entitlement since it seems that there deal has been frustrated."

4. No response was received to this inquiry.

5. On June 10, 2013, Mobilicity issued a public notice which stated, among other things:

> "Data & Audio-Visual Enterprises Holdings Inc. and its affiliates (collectively, **Mobilicity**) today announced that TELUS has exercised its option to terminate the TELUS Acquisition Plan.
>
> Mobilicity also announced that it will now pursue its previously announced recapitalization plan, which will be voted on by debtholders at a meeting on June 25, 2013."

6. I wish to arrange the cross-examination of Mr. Aziz on his affidavits as soon as possible. Please advise of your and his availability to conduct such cross-examinations next week. Also, I wish to set a schedule with respect to the oppression pleadings. Please advise of your availability to attend on a 9:30 at the Commercial List on Friday June 21, or Monday June 24, 2013.

7. There are several other outstanding procedural issues. I will address same under separate cover.

Yours very truly,

BELLMORE & MOORE

David Moore

Per: David C. Moore

DCM/bh

cc: Fred Myers at fmyers@goodmans.ca
Janice Wright at janice.wright@rslawyers.com

David Moore

From:	David Moore
Sent:	Friday, June 28, 2013 5:35 PM
To:	'Pasparakis, Orestes'; 'Kestenberg, Marc'
Cc:	'fmyers@goodmans.ca'; 'Janice.Wright@rslawyers.com'
Subject:	RE:
Categories:	Printed/Saved - BH

Catalyst wishes to proceed with the oppression application.

Cross examinations/examinations were supposed to have occurred in early May. At the last minute, Mobilicity announced it was proceeding with the Acquisition Plan.

When we attended before Campbell J. in chambers on the Tuesday after the long weekend following that announcement, the implication was that the steps previously contemplated about documents, examinations etc had fallen by the wayside, and Mobilicity insisted that it proceed on the date it had selected.

I do not want to get jammed again, it has happened a few times already.

You have indicated you are away "for many of those dates". Which ones ?

From: Pasparakis, Orestes [mailto:Orestes.Pasparakis@nortonrosefulbright.com]
Sent: Friday, June 28, 2013 10:39 AM
To: David Moore; Kestenberg, Marc
Cc: 'fmyers@goodmans.ca'; 'Janice.Wright@rslawyers.com'
Subject: Re:

I am away for many of those dates. Why the sudden rush? Also, it seems your materials need refreshing to focus on where we are versus where we were.

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Orestes.Pasparakis@nortonrosefulbright.com

NORTON ROSE FULBRIGHT
Law around the world
nortonrosefulbright.com

From: David Moore [mailto:david@bellmore.ca]
Sent: Friday, June 28, 2013 10:15 AM
To: Kestenberg, Marc
Cc: Pasparakis, Orestes; Myers, Fred <fmyers@goodmans.ca>; Janice Wright <Janice.Wright@rslawyers.com>
Subject: RE:

Please let me know by the end of today about your availability for cross-examinations and Rule 39 examinations during the week commencing July 8, 2013, failing which I will just proceed to book and serve Notices re same.

Thank you.

From: David Moore
Sent: Thursday, June 27, 2013 4:13 PM
To: 'Kestenberg, Marc'
Cc: Pasparakis, Orestes; 'Myers, Fred'; 'Janice Wright'
Subject:

Marc-

As mentioned, I want to move the oppression matter along. Aside from the attendance on the 4^{th}, please let me know about dates for the examinations/cross-examinations.

David Moore

From: David Moore
Sent: Thursday, July 11, 2013 6:01 PM
To: 'Kestenberg, Marc'; 'Janice.Wright@rslawyers.com'; 'Myers, Fred'; 'boneill@goodmans.ca'; Diana Soos; 'Greg Temelini (Greg.Temelini@rslawyers.com)'
Cc: 'Pasparakis, Orestes'
Subject: RE: Catalyst re Mobilicity - Court File No: CV-13-10016-00 [OR-EDRMS.FID6125537]

Categories: Saved

Thank you, I confirm I will attend and speak to it.

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Thursday, July 11, 2013 5:53 PM
To: David Moore; Janice.Wright@rslawyers.com; Myers, Fred; boneill@goodmans.ca; Diana Soos; Greg Temelini (Greg.Temelini@rslawyers.com)
Cc: Pasparakis, Orestes
Subject: RE: Catalyst re Mobilicity - Court File No: CV-13-10016-00 [OR-EDRMS.FID6125537]

David,

We are all agreed on delivering any responding Affidavits by July 22nd at 5pm.

Are you able to adjourn tomorrow's 9:30 so that an attendance is not required from the Respondents?

Marc Kestenberg
Partner
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T: +1 416.216.3977 | F: +1 416.216.3930
Marc.Kestenberg@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David Moore [mailto:david@bellmore.ca]
Sent: July-11-13 9:52 AM
To: Kestenberg, Marc; Janice.Wright@rslawyers.com; Myers, Fred; boneill@goodmans.ca; Diana Soos
Cc: Pasparakis, Orestes
Subject: RE: Catalyst re Mobilicity - Court File No: CV-13-10016-00 [OR-EDRMS.FID6125537]

Further to our conversation yesterday, I look forward to hearing from you regarding the delivery date of any further responding materials in Catalyst's oppression proceeding.

I will not review all of the history, but given the prior schedule that had been set, the fact that Mr. Aziz has already responded in an earlier affidavit, and the fact that the further amendments were mimimal and in keeping with what I had previously advised, I would hope that we would be able to agree that if any further materials are going to be filed, this would occur reasonably expeditiously.

Once that has occurred we could fix the rest of the schedule.

David Moore

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Tuesday, July 09, 2013 2:13 PM

To: Janice.Wright@rslawyers.com; Myers, Fred; O'Neill, Brendan (boneill@goodmans.ca); David Moore; Diana Soos
Cc: Pasparakis, Orestes
Subject: RE: Catalyst re Mobilicity - Court File No: CV-13-10016-00 [OR-EDRMS.FID6125537]

Counsel,

Justice Morawetz is on vacation on Friday. As a result, we have been placed on Justice Wilton-Siegel's list for the 9:30 on Friday July 12th.

Marc Kestenberg
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Marc.Kestenberg@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: July-09-13 12:14 PM
To: joe.dipietro@ontario.ca
Cc: Pasparakis, Orestes; Janice.Wright@rslawyers.com; Myers, Fred; O'Neill, Brendan (boneill@goodmans.ca); David Moore; dmsoos@bellmore.ca
Subject: RE: Catalyst re Mobilicity - Court File No: CV-13-10016-00 [OR-EDRMS.FID6125537]

Joe,

Further to my email below, all counsel have agreed to move tomorrow's appointment with Justice Morawetz to Friday morning. Is Justice Morawetz available?

Thank you for your assistance.

Marc Kestenberg
Partner
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T: +1 416.216.3977 | F: +1 416.216.3930
Marc.Kestenberg@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: July-09-13 11:14 AM
To: joe.dipietro@ontario.ca
Cc: Pasparakis, Orestes; Janice.Wright@rslawyers.com; Myers, Fred; O'Neill, Brendan (boneill@goodmans.ca); David Moore; dmsoos@bellmore.ca
Subject: Catalyst re Mobilicity - Court File No: CV-13-10016-00 [OR-EDRMS.FID6125537]

Joe,

Last Friday we attended before Justice Morawetz at a 9:30. He set aside two hours of motion time before Justice Wilton-Siegel for tomorrow. All counsel have agreed that such motion time is no longer needed and may be vacated.

We are also discussing whether it makes sense to reschedule tomorrow's 9:30 (scheduled for 9am before Justice Morawetz) for Thursday or Friday of this week, depending on availability. Counsel are of the collective view that we would like to have a fruitful discussion about scheduling prior to any attendance. However, we will not have Catalyst's amended materials until later today, limiting our ability for discussion.

We will send you an e-mail this afternoon updating you on the rescheduling issue.

Regards,

Marc Kestenberg
Partner
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Marc.Kestenberg@nortonrosefulbright.com

David Moore

From: Myers, Fred [fmyers@goodmans.ca]
Sent: Friday, August 09, 2013 3:20 PM
To: 'Kestenberg, Marc'; David Moore
Cc: O'Neill,Brendan; Pasparakis, Orestes; Janice.Wright@rslawyers.com
Subject: RE: Aziz Examination [OR-EDRMS.FID6125537]

Without accepting that your client has any remaining entitlement to conduct other examinations, we agree with your proposal below that you will proceed first with the cross-examination of Mr. Aziz and we will not raise the fact that the cross-examination was conducted as a basis for any relief that our clients may seek or to respond to any relief that your client may seek.

As you are aware, I am out of town from the 13th. I will return to the office on the 26th. We discussed the other day that, I am quite content for the cross-examination of Mr. Aziz to proceed in my absence. However, there is no urgency to proceed with other steps in the litigation in my absence. There is nothing on the table requiring an urgent hearing. As we are discussing contested litigation steps in the oppression application rather than advancing the corporate restructuring, I am the counsel who needs to be involved from this firm.

Fred Myers
Goodmans LLP

416.597.5923
fmyers@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

www.goodmans.ca

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Friday, August 09, 2013 3:07 PM
To: David Moore
Cc: O'Neill,Brendan; Myers, Fred; Pasparakis, Orestes; Janice.Wright@rslawyers.com
Subject: Aziz Examination [OR-EDRMS.FID6125537]

David,

It seems I may have been inadvertently dropped off your email below.

I think Orestes has expressed our views on the meeting.

With respect to Bill's cross examination, we will not raise the timing issue but reserve all other rights regarding the other proposed witnesses. Bill is not available on Thursday, but we can start at 9am on Friday, if you believe you will need 5 hours.

Let us know.

Marc Kestenberg
Partner

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Marc.Kestenberg@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

From: David Moore [mailto:david@bellmore.ca]
Sent: Friday, August 09, 2013 12:42 PM
To: Pasparakis, Orestes
Cc: Myers, Fred; Janice.Wright@rslawyers.com
Subject: RE:

I disagree with your many of your comments. Without attempting to address them all, I suggested that the meeting take place as soon as possible to be followed by the cross several days later. Without further discussion, the response was that Mr. Aziz would meet **next Friday**, the last day before his 2 week vacation, thereby making my suggestion impossible.

I had previously agreed that it makes sense to proceed with the cross of Mr. Aziz **before** any Rule 39.03 examinations, and I am proceeding on the basis that ***aside from any other issues or objections that anyone wishes to raise***, no one objects to the reversal of the normal order.

Finally, please advise if Mr. Aziz is available on Thursday given the constraint which is imposed with respect to his time on Friday.

Also, please advise of your availability for a 930 am attendance next week.

From: Pasparakis, Orestes [mailto:Orestes.Pasparakis@nortonrosefulbright.com]
Sent: Friday, August 09, 2013 12:01 PM
To: David Moore
Cc: Myers, Fred; Janice.Wright@rslawyers.com; Kestenberg, Marc
Subject: RE:

David

We proposed that the parties focus on a path that saw them meet to try and find common ground and explore what real issues still existed. We had told you that there was a window for such a discussion. We also advised you that those discussions would be entirely inconsistent with a litigation path. Your client has appeared to select a litigation path. In your email to my partner this morning, you proposed to examine Mr. Aziz on the same day he was prepared to making himself available for a client-to-client meeting.

In these circumstances, we will not be making our client available for a meeting. You can proceed with the examination of the 16th. Mr. Aziz is available that day – but only until 2 pm. I am free to start at 10 am. We object to any further examination of any further party or witness. We will schedule our cross of your client when Mr. Myers returns from his vacation.

See you next week.

Orestes Pasparakis

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2013 Global Mining Law Firm of the Year - International Who's Who of Business Lawyers

Norton Rose in Canada ranked number one law firm brand - Acritas' Canadian Law Firm Brand Index 2013

From: David Moore [mailto:david@bellmore.ca]
Sent: August-08-13 5:22 PM
To: Pasparakis, Orestes; Kestenberg, Marc
Cc: Myers, Fred; Janice.Wright@rslawyers.com
Subject:

I understand that Mr. Aziz will be way for two weeks commencing Monday August 19, 2013.

I wish to cross examine Mr. Aziz before then, and, as discussed, prior to any Rule 39.03 examinations.

Proceeding in this manner will enable Catalyst to assess further whether examinations under rule 39.03 of all the individuals previously identified would be necessary, and, if there is a dispute about this, to attempt to resolve same and if necessary to seek appropriate directions before the end of August. I do not want to leave all these steps and issues outstanding until September and I am expressly instructed not to do so.

I am flexible as to which day said examination would occur next week and I would endeavor to conduct same in less than a full day.

David Moore

---

made. If you are not the intended recipient of this communication, please advise us immediately and delete this email without reading, copying or forwarding it to anyone.

This is Exhibit ......H............ referred to in the

affidavit of ......James Riley..........

sworn before me, this ......19th......................

day of ......October.................... . ..2013

....

A COMMISSIONER FOR TAKING AFFIDAVITS

From: David Moore
Sent: Thursday, September 19, 2013 1:49 PM
To: 'Kestenberg, Marc'
Cc: 'Soliman, Walied'; 'Pasparakis, Orestes'; 'Barry Goldberg (bgoldberg@canaccordgenuity.com)'; 'Bill Aziz (baziz@bluetreeadvisors.com)'; 'Stewart Lyons'
Subject: RE: Letter to Moore - September 19, 2013 [OR-EDRMS.FID6125537]

The allegations contained in your letter are erroneous.

I shall respond further before the afternoon is out.

David Moore

From: Kestenberg, Marc [mailto:Marc.Kestenberg@nortonrosefulbright.com]
Sent: Thursday, September 19, 2013 1:03 PM
To: David Moore
Cc: Soliman, Walied; Pasparakis, Orestes; Barry Goldberg (bgoldberg@canaccordgenuity.com); 'Bill Aziz (baziz@bluetreeadvisors.com)'; Stewart Lyons
Subject: Letter to Moore - September 19, 2013 [OR-EDRMS.FID6125537]

Please see attached.

Marc Kestenberg
Partner
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From: David Moore
Sent: Thursday, September 19, 2013 8:33 PM
To: 'Kestenberg, Marc'; 'Pasparakis, Orestes'
Subject: Catalyst/Mobilicity

Further to my email earlier today, I note that the alleged discussions you refer to were on an off-the-record, without prejudice basis.

That said, as I wrote earlier, the allegations contained in your letter are erroneous.

During the aforementioned discussions, Mr. de Alba expressed Catalyst's concerns about the deteriorating financial position of Mobilicity, the resulting damage to its business, and the adverse effects of this upon the collateral held in relation to the First Lien Notes. In this context, Mr. de Alba indicated that Catalyst might have to consider initiating a creditor sponsored CCAA application to protect the interests of the company's stakeholders.

No threat was made and there was no reference to any bankruptcy proceedings.

Catalyst has determined that it is indeed necessary to initiate a creditor sponsored CCAA proceeding. Accordingly, I enclose herewith a Notice of Application (which will be formally issued tomorrow morning), a sworn affidavit of James Riley dated September 19, 2013 (without exhibits),a draft of the CCAA order which Catalyst intends to seek, and the DIP term sheet referred to therein.

Earlier today, I advised His Honour Judge Morawetz of Catalyst's intention to proceed in this manner, and requested that time be set aside tomorrow for an initial appearance in relation to the above application. His Honour Judge Morawetz indicated that he would arrange for a judge to be available for this purpose tomorrow afternoon at 2:30 p.m.

Yours very truly,
David C. Moore.

Commercial List No CV 13-10274-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

REPLY
AFFIDAVIT OF JAMES RILEY
SWORN OCTOBER 19, 2013

BELLMORE & MOORE
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