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

Applicants

MOTION RECORD OF THE CATALYST CAPITAL GROUP INC.

(Returnable October 17, 2013)

October 9, 2013

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NOTICE OF MOTION
(returnable October 17, 2013)

THE CATALYST CAPITAL GROUP INC. ("**Catalyst**") will make a motion to a Judge presiding over the Commercial List on Thursday, the 17th day of October, 2013 at 10:00 a.m., or on an alternative date to be scheduled by order of this Court, at the Courthouse, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

(a) an Order, *inter alia*:

(i) abridging the time for service of this Notice of Motion and the Motion Record herein, and validating service thereof, if necessary;

(ii) providing direction to the Ernst & Young Inc., in its capacity as court-appointed monitor in these proceedings (the "**Monitor**"), with respect to a debtor-in-possession ("**DIP**") financing solicitation process, in accordance with fair and proper procedures to be proposed by the Monitor and approved by the Court;

(iii) establishing a committee of creditors of Data & Audio-Visual Enterprises Wireless Inc. ("**Opco**"), the composition of which shall be determined by further Order of the Court to be made with the benefit of a recommendation from the Monitor, but which shall include at least one nominee of Catalyst (the "**Opco Creditor Committee**");

(iv) directing the Applicants to pay the reasonable and documented fees and expenses of legal and financial advisors to the Opco Creditor Committee, and adding the fees and expenses of such advisors to the Administration Charge (as set out and defined in the initial order of Newbould J., dated September 30, 2013 (the "**Initial Order**"));

(v) declaring that the Applicants shall indemnify the members of the Opco Creditor Committee against obligations and liabilities that they may incur as members of the Opco Creditor Committee, except to the extent that, with respect to any member of the Opco Creditor Committee, the obligation or liability was incurred as a result of his or her gross negligence or wilful misconduct, and granting a charge in favour of the Opco Creditor Committee as security for such indemnity, which charge shall not exceed $5 million and shall rank *pari passu* with the Directors' Charge (as set out and defined in the Initial Order);

(vi) varying the Initial Order, as follows:

(1) by deleting paragraphs 48 and 49 of the Initial Order in their entirety; and

(2) by deleting all references therein to payment by the Applicants of any legal or other professional fees and disbursements of the Ad Hoc Committee of Noteholders, and removing such fees and disbursements from the Administration Charge;

(vii) directing legal counsel to the Ad Hoc Committee of Noteholders to reimburse the Applicants all amounts paid by them in respect of the Ad Hoc Committee of Noteholders' legal fees and disbursements, under the Initial Order or otherwise; and

(b) such further and other relief as counsel may advise and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

(a) the relief sought is appropriate having regard to the facts and circumstances set out in the Affidavit of James C. Riley, sworn October 9, 2013;

(b) paragraphs 68 and 69 of the Initial Order;

(c) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(d) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 and 39 of the *Rules of Civil Procedure*; and

(e) such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Affidavit of James C. Riley, sworn October 9, 2013, and the exhibits thereto; and

(b) such further and other material as counsel may advise and this Court may permit.

October 9, 2013

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Proceedings commenced at Toronto

NOTICE OF MOTION
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Court File No. CV-13-10274-00CL

ONTARIO
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BETWEEN:

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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

AFFIDAVIT OF JAMES RILEY
(Sworn October 9, 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 support of a motion pursuant to the "comeback" clause contained in the Initial CCAA Order herein, which was granted on September 30, 2013, the first return date for this proceeding. The contents of this affidavit:

(a) address and respond to certain assertions and allegations contained in the Applicants' 800+ page Motion Record, which Catalyst first received shortly after 8:00 am on September 30, 2013;

(b) outline the reasons for the relief and directions sought by Catalyst pursuant to the comeback clause, including: (i) approval of, or in the alternative, directions for a process which Catalyst has requested be established and implemented by the Monitor with respect to Debtor in Possession (**"DIP"**) funding for the Mobilicity Group; and (ii) the appointment of a Creditors' Committee to allow for appropriate disclosure and fair and even treatment of all creditors affected by these proceedings.

3. Unlike the other parties who have appeared and taken a position in these and previous proceedings, Catalyst's only investment in the Mobilicity Group is through its position as a holder of First Lien Notes issued by Opco, in respect of which Opco granted a first lien over all of its assets and undertakings. The First Lien Notes were issued pursuant to and in accordance with the provisions of a First Lien Indenture dated April 20, 2011, following circulation of an Offering Memorandum which was used to solicit investors in the First Lien Notes. Now shown to me and marked as **Exhibit "A"** and **"B"** respectively, are true copies of the First Lien Indenture and the Offering Memorandum.

4. Catalyst's rights, interests and entitlements are derived from the terms of the First Lien Notes. Catalyst's objectives in the current proceedings, Catalyst's oppression application, and in the CBCA proceedings referred to herein are and have been to ensure that its legal rights as the owner of over $60 Million of First Lien Notes are honoured and protected. Contrary to what has been alleged from time to time by the Mobilicity Group and others, Catalyst has not sought and does not seek any inappropriate advantages or rights in the current or in any of the earlier court proceedings. Rather Catalyst seeks to ensure that:

(a) its rights to be paid interest and repaid the principal owing under the First Lien Notes;

(b) its right to a "Make-Whole" premium which is required to be paid in certain circumstances set out in the First Lien Indenture; and

(c) its right to insist that the amending and other substantive provisions of the First Lien Indenture,

are all honoured and adhered to.

5. From Catalyst's standpoint, it is critical for the Court to understand the practical implications of the structure of the Mobilicity Group, the debt obligations, assets, and potential recoveries at each of Opco and Holdco, and the relationship of these matters to the rights of the First Lien Holders. These matters are depicted in the summary chart which is now shown to me and marked as **Exhibit "C"** (the **"Chart"**).

6. As appears from the **Chart**, the aggregate obligations of Opco on account of the First Lien Notes (including the Make-Whole), the Second Lien Notes, and the unsecured trade and other liabilities exceed $445 Million. In this context, there are several very important realities and conflicts. First, unless a transaction for the sale of Opco yields net proceeds in excess of $445 Million, the value of Holdco's shareholding interest in Opco is zero and the recovery of any of the stakeholders at the Holdco level will be limited to the value of the tax losses at Holdco. Second, the interests of the stakeholders of Opco and Holdco are materially different. For the Opco stakeholders and in particular the First Lien Holders, it is desirable that a sale transaction for the assets of Opco be completed as expeditiously as possible, before the value of Opco's assets deteriorates further. In contrast it is in the interests of the Holdco stakeholders to gamble by trying to achieve a sale transaction at the absolute highest price possible, regardless of how long that takes, or the risks involved: unless sale proceeds at the highest possible range set out in the Chart are realized their interests have no value. Thirdly, it is in the interests of Holdco and its stakeholders to structure a sale transaction which effectively disregards the separate corporate existence of Opco and Holdco and allows the creditors of Holdco to share in the value of Opco in priority to Opco's unsecured creditors.

7. The conflicts inherent in the above structure and realities are exacerbated by the fact that a substantial portion of the First Lien Holders (approximately 50% by Catalyst's approximation) also are very substantial creditors at the Holdco level, whose claims against Holdco are currently worthless. These are the creditors who participated in the February Financing referred to below. Given the size of their investments in Holdco, it is in the interests of these creditors (the "**Conflicted First Lien Holders**") to arrange or orchestrate transactions at

the Opco level which will result in the funds which would otherwise be used to honour obligations under the First Lien Notes, being made available to reduce the debt at Holdco. Efforts have already been made by the Conflicted First Lien Holders to achieve this result.

Response to Certain Aspects of the Applicants' September 29, 2013 Motion Record

8. In its materials, Mobilicity paints Catalyst as a persistent and unreasonable litigator who has aggressively attacked the Mobilicity Group to advance inappropriate interests and objectives. According to the Mobility Group, this has been an unwarranted drain on its resources; Catalyst's oppression proceedings are characterized as being an unwarranted "nuisance". Mobilicity's filing also implies that it has thoroughly and carefully canvassed all of the options open to it, in an open and appropriate process.

9. I do not believe that the foregoing characterizations of Catalyst's actions or the description of the prior proceedings and events are accurate or fair.

(a) The History of Catalysts' Oppression Application

10. As noted above, Catalyst's intentions throughout have been to protect its legal interests, starting with the initiation of oppression proceedings in relation to the February Financing described in several affidavits filed previously with this Court. The context in which these proceedings were initiated and Catalyst's concerns in connection with the February Financing were first detailed in the Affidavit of Gabriel de Alba, dated February 26, 2013, and explained further in a second Affidavit of Mr. De Alba dated May 9, 2013. Copies of these Affidavits are now shown to me and marked as **Exhibits "D" and "E"** hereto.

11. As appears from these materials, Catalyst was (and remains) in the dark about many aspects of the February Financing. However, based upon the documents that had been disclosed to it, Catalyst commenced its oppression proceedings because of the following issues and concerns:

(a) the February Financing included a bridge fee of $8.25 Million, which was deemed to be fully earned upon an initial advance of $15 Million. This fee was immediately paid through the issuance of Second Lien Notes to the Conflicted First Lien Holders. These Second Lien Notes were due and payable by Opco on May 30, 2013, regardless of whether any further advances were made under the February Financing;[2]

(b) the initial advances contemplated by the February Financing were subject to numerous conditions and totalled $35 Million. These advances were evidenced by the issuance of additional Second Lien Notes by Opco, which also fell due on May 30, 2013. In addition, the February Financing contemplated a "follow-on" financing which was to be used to repay the Second Lien Notes and provide additional funds of approximately $30 MM to Opco to use in its operations;

(c) the Second Lien Notes were secured by way of an encumbrance against the assets of Opco, including the Spectrum purchased by Opco in 2008 (Opco's most valuable asset). This encumbrance was prohibited by terms of the First Lien Indenture, which contained protections in favour of the First Lien Holders for the

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[2] As indicated in Mr. De Alba's affidavits, this fee appears to contravene the criminal interest rate provisions of the Criminal Code.

purpose of avoiding a situation in which holders of new encumbrances against the security granted in relation to the First Lien Notes, although technically subordinate to the First Lien Notes, could precipitate a sale of that security at a time or in circumstances contrary to the wishes or adverse to the interests of the First Lien Holders.

(d) The materials which had been disclosed to Catalyst indicated that in order to circumvent the above prohibition, the Conflicted First Lien Holders (who received Second Lien Notes in payment of the $8.25MM fee referred to above) unilaterally enacted an amendment to the First Lien Indenture which modified the prohibition referred to above. The materials provided to Catalyst also indicated that although this amendment was detrimental to the interests of the First Lien Holders as a group, it was enacted without notice by the Conflicted First Lien Holders, contrary to the amendment provisions of the First Lien Indenture;

(e) the foregoing issues and concerns were aggravated by the fact that the usual terms necessary to provide for a fully effective subordination, normally contained in an inter-creditor agreement, had not been provided for in the February Financing;

(f) all of this was capped by the fact that instead of containing the usual and customary fiduciary out provisions, the February Financing contained several covenants which gave extraordinary rights to the Conflicted First Lien Holders to monitor and prohibit alternative financing discussions, and to veto any further financings that might become available to Opco.[3]

12. Following the institution of Catalyst's oppression application, the following things happened:

(a) Mobilicity brought a motion to stay Catalyst's claim. This motion was heard and decided in favour of Catalyst by Her Honour Judge Mesbur in a decision dated April 11, 2013. Now shown to me and marked as **Exhibit "G"** is a true copy of said decision;

(b) In dismissing Mobilicity's motion, Judge Mesbur's reasons for decision concluded with the following direction:

> "[45] Since the application will proceed, it should proceed quickly to resolution. To that end, the parties are directed to schedule and attend a 9:30 appointment within one week of the release of these reasons to fix a speedy timetable for all steps necessary in the application, including the date of hearing."

(c) The parties subsequently attended before His Honour Judge Morawetz on April 17, 2013, at which time a schedule for the steps required to adjudicate Catalyst's

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[3] These special provisions are highlighted in the attached extract from the Note Purchase Agreement relating to the Second Lien Notes, a true copy of which is now shown to me and marked as **Exhibit "F"**. According to testimony elicited from Mr. Aziz about this financing (which had been entered into several months before his appointment as CRO), the Holdco Board agreed to these provisions, and was advised that no fiduciary out was necessary, because it was advised that no other creditor was willing to consider bridge financing. This was erroneous as Catalyst's counsel had expressed a willingness to consider providing bridge financing. The portion of Mr. Aziz's testimony referring to this issue is included in Exhibit "P" herein, referred to below.

application, culminating in a one day hearing on May 24, 2013, was fixed on consent;

(d) I am advised by David C. Moore and verily believe that when the above schedule was fixed, counsel for the Mobilicity Group and the other Respondents indicated that there might be a filing by Mobilicity under the CBCA in the near future, and that if such a filing occurred, the steps which had been agreed upon might have to be coordinated with any subsequent proceedings;

(e) On April 24, 2013, the Mobilicity Group instituted proceedings under the CBCA in relation to two potential reorganizations – a detailed Recapitalization Plan which contemplated financing of $75MM (part of which was to be used to repay the Second Lien Notes issued in the February Financing whose propriety was the subject of the oppression proceedings commenced by Catalyst) and an Acquisition Plan. The Acquisition Plan contained no details of any sale transaction, because the Mobilicity Group had not been successful in arriving at any agreement to sell any of the assets owned by Opco or Holdco. Now shown to me and marked as **Exhibits "H"** and **"I"** are true copies of the Order and Reasons for Decision of His Honour Judge Wilton-Seigel with respect to these CBCA proceedings dated April 25, 2013 and May 1, 2013, respectively;

(f) I am advised by David C. Moore and verily believe that following the initiation of the above CBCA proceedings, the Mobilicity Group did not suggest or argue that the oppression proceedings which were the subject of Justice Mesbur's ruling were a "nuisance" or that they should be stayed or postponed. Rather, I am advised by David C. Moore and verily believe that the Mobilicity Group suggested - in light of the fact that the issues which had been raised by Catalyst had a potential impact upon the voting procedures in the CBCA proceedings and upon the fairness of certain of the transactions contemplated in the Recapitalization Plan - that the two proceedings should be heard together.

(g) On May 16, 2013, following the delivery of additional materials pursuant to the scheduling arrangements referred to above, the Mobilicity Group announced that it had entered into a sale transaction with Telus (the "**Telus Transaction**") and that it intended to proceed with a revised Acquisition Plan instead of the Recapitalization Plan which had been previously circulated. This announcement was made at a time when the parties were on the verge of conducting the cross-examinations on the affidavit materials which had been filed by both sides. In short order, the Mobilicity Group delivered a lengthy application record returnable on May 28, 2013 seeking approval for the amended and newly circulated Acquisition Plan based upon the Telus Transaction which had just been announced. The Mobilicity Group asserted that it was critical to proceed without any delay regardless of the fact that the steps which had been previously agreed upon to complete the record through cross-examinations had not and could not be completed in time for such a hearing.

13. Now shown to me and marked as **Exhibit "J"** is a true copy of an affidavit which I swore on May 27, 2013 which details certain of the above events. This affidavit was prepared on

an urgent basis over the weekend of May 25-26, 2013 to support a request by Catalyst for an adjournment of the hearing date of May 28, 2013. Said affidavit also described the components of the Telus Transaction by which its proponents had created a structure which would have avoided payment of the Make-Whole premium, despite the fact that the Telus Transaction provided for the immediate repayment of the First Lien Notes several years before they fell due (one of the events that triggers entitlement to the Make-Whole under the First Lien Indenture). In addition, my May 27 affidavit refers to communications from the Mobilicity Group confirming that the intention was that the proceeds derived from the Telus Transaction would <u>not</u> be used to pay the Make-Whole; rather, the Conflicted First Lien Holders had reserved to themselves the right to elect a distribution of funds that diverted proceeds otherwise available to pay the Make-Whole, to pay obligations owed to them at the Holdco level.

14. The foregoing potential outcome confirmed the worst fears held by Catalyst: namely that the Conflicted First Lien Holders had participated in the February Financing with an intention to implement a sale of Opco adverse to the interest of holders of First Lien Notes who did not hold debt at the Holdco level, by structuring that transaction in a manner which did not honour the Make-Whole provisions and which diverted over $70 Million of the Opco sale proceeds to debt at the Holdco level. In these circumstances, as at May 27, 2013 Catalyst was adamantly opposed to the Acquisition Plan and delivered my May 27, 2013 affidavit in support of a motion to adjourn the hearing the following day.

15. Negotiations between the parties continued on May 27 and May 28, 2013. These negotiations concluded very shortly before the return of the approval hearing before His Honour Judge Campbell which is referred to in the Mobilicity Group's Application Record. As stated in

the Application Record herein, His Honour Judge Campbell did grant an Approval Order for the revised Acquisition Plan based upon the Telus Transaction on May 28, 2013, and Catalyst acquiesced in the granting of said Order. However, the Mobilicity Group's Application Record did not attach that order, nor did it refer to the aforementioned negotiations, or to the fact that the reason for Catalyst's acquiescence was that <u>the Mobilicity Group agreed</u> that the order which the Mobilicity Group had been seeking for the approval of the Telus Transaction was amended at the last minute to include specific provisions to address Catalyst's concerns and objections. In particular, Justice Campbell's Order contained provisions which created a fund of $71 Million (less certain fees) to be set aside out of the sale proceeds, which preserved Catalyst's ability to seek payment of the Make-Whole out of those proceeds, which confirmed that the election referred to above by the Conflicted First Lien Holders to extinguish the Make-Whole would <u>not</u> be exercised, and which reserved Catalyst's entitlement and ability to advance and argue, among other things, all of the oppression issues previously raised by it. Now shown to me and marked as **Exhibit "K"** is a true copy of the Order of His Honour Judge Campbell dated May 28, 2013 in which the aforementioned provisions have been highlighted.

(b) The Rejection of the Telus Transaction; Subsequent Events

16. On June 4, 2013 the Federal Government announced that it was not prepared to approve the Telus Transaction. In the Press Release issued that day, Industry Canada made it clear that <u>no sale</u> of any Spectrum purchased by Opco in 2008 to any incumbent in the wireless industry would <u>even be considered</u> prior to the expiry of the 5-year moratorium referred to in the release. The Press Release also made it clear that even after the expiry of the moratorium, there could be no assurance that any such transaction would be approved, given Industry Canada's

stated intention to carefully scrutinize any such transfer of Spectrum in light of its concerns about the undue concentration of Spectrum in the hands of incumbents. Now shown to me and marked as **Exhibit "L"** is a true copy of this Press Release.

17. Catalyst recognized that the refusal of Industry Canada to approve the Telus Transaction would create substantial difficulties and uncertainties for the Mobility Group and would adversely affect any attempt to sell Opco's business.[4]

18. As a result, on June 6, 2013 counsel for Catalyst forwarded a letter signed by Catalyst and two proposals for financing to counsel for Mobilicity by way of the following email:

> "Further to my email yesterday, I am attaching the signed letter and term sheets from Catalyst Capital Group Inc. Please note that the ranking of the DIP is to be junior only to the First Lien Notes. **Representatives of Catalyst would be pleased to meet with representatives of Mobilicity to discuss the attachments when convenient.**" (emphasis added)

Now shown to me and marked as **Exhibit "M"** is a true copy of this email, the signed letter referred to therein, and the two terms sheets proposed by Catalyst for discussion at that time.

19. Counsel for the Mobilicity Group, Mr. Walied Soliman, responded on June 6, 2013 as follows:

> "Jon – thank you for this. We are currently in an exclusivity with Telus and therefore cannot entertain these term sheets at this time. Our bankers are keeping a log of incoming offers such as yours, which will be reviewed at the appropriate time."

---

[4] This impact was confirmed in the Affidavit William Aziz dated September 25, 2013, which the Mobilicity Group filed in support of a request to adjourn Catalyst's CCAA proceeding. In that affidavit, Mr. Aziz swore (paragraph 44) that: **"The June 4, 2013 Industry Canada decision has created an environment of uncertainty for the Mobilicity Group and its stakeholders and has adversely impacted the Mobilicity Group's opportunities to progress discussions with potential acquirers at this time."**

Now shown to me and marked as **Exhibit "N"** is a true copy of said email.

20. Catalyst did not understand why any exclusivity provisions with Telus could create an impediment to a discussion about Catalyst's proposals, in light of the fact that it was clear that the Telus Transaction would not be proceeding and had been or was about to be formally terminated. Consequently, Mr. Levin sent a further email to Mr. Soliman asking for clarification:

> "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 their deal has been frustrated."

Now shown to me and marked as **Exhibit "O"** is a true copy of said email.

21. To the best of my knowledge, Mr. Levin never received any response to this inquiry. Similarly, no one from the Mobilicity Group ever contacted Catalyst in response to the invitation that had been extended to discuss these proposals.

22. As described below, Mr. Aziz was ultimately cross-examined on certain of the affidavits that he had filed in the aforementioned proceedings on August 16, 2013. During that cross-examination Mr. Aziz confirmed that the Mobilicity Group had never contacted Catalyst to discuss either of the above proposals. During his cross-examination Mr. Aziz also testified as follows:

(a) with reference to the "other offers" referred to in the emails above, the Mobilicity Group had received three additional financing proposals from third parties, but, as in the case of the Catalyst proposals, had not had any discussions with those third parties about these financing alternatives;

(b) the provisions of the February Financing which gave special rights to the Conflicted First Lien Holders to monitor and prohibit financing discussions, and to veto any alternative financing proposals, had not been amended and had not been waived:

> "Mr. Moore: So my question is, have those provision been amended at all?
>
> Mr. Pasparakis: You want to know if **the specific provisions that deal with the preclusion of discussions have amended?**
>
> Mr. Moore: Yes.
>
> Mr. Pasparakis: To your knowledge, do you know?
>
> The Deponent: **I do not believe they have."**
>
> (emphasis added)

23. At the time when the above evidence was given, the context was that the Mobilicity Group was in the process of circulating interim financial statements and a report for the period ending June 30, 2013, in which it stated:

> "Based on Management's forecast as at August 14, 2013, the available cash resources to carry on the Company's operations could be <u>depleted by the week ending September 20, 2013</u>."

and further that:

"The Company's ability to continue as a going concern is dependent upon its ability to obtain the additional funding required to meet the Company's cashflow needs."[5]

24. However, despite these circumstances, Mr. Aziz testified that the reason why the Mobilicity Group had not had any discussions about such financing options was:

"We haven't seen the need to seek those discussions at this juncture."

25. Now shown to me and marked as **Exhibit "P"** is a true copy of the extract from Mr. Aziz's cross-examination which relates to the above testimony, as well as certain other matters referred to herein.[6]

26. As noted above and confirmed in the aforementioned evidence, Catalyst did not receive any response to its attempt to engage in a dialogue with the Mobilicity Group regarding potential financing alternatives in early June. Instead, over the next several weeks Mobilicity issued a series of announcements with respect to the Recapitalization Plan that had been detailed in its original CBCA filing on April 24, 2013, and which provided for repayment of the Second Lien Notes, which were the subject of the issues raised by Catalyst in the proceedings described by Justice Mesbur. Now shown to me and marked as **Exhibit "Q"** are true copies of the various press releases issued by the Mobilicity Group in connection with proposed votes regarding the Recapitalization Plan during this period.

27. In light of the above events, Catalyst took steps to complete the record required to adjudicate these issues, including the cross-examination of Mr. Aziz. Catalyst did this because it

[5] These statements are contained in Exhibit J of the Applicant's Application Record, page 6837.

[6] The cross-examination was not completed on August 16, 2013; the parties agreed to adjourn it to a mutually convenient date in early September, coinciding with Mr. Aziz's return from a short holiday.

did not want to be faced with the same difficulties it had previously encountered when the Mobilicity Group had attempted to force on the approval hearing for its revised Acquisition Plan, in circumstances where the fairness issues which had been raised by Catalyst's oppression proceedings could not properly be argued because the record was not complete.

28. I am advised by Mr. Moore and verily believe that a 9:30 a.m. attendance before Mr. Justice Morawetz took place on July 5, 2013 to discuss the scheduling arrangements for these matters, including the cross-examination of Mr. Aziz. I am further advised by Mr. Moore and verily believe that at this 9:30 attendance Catalyst was met with various arguments and objections, ranging from a submission that Catalyst had waited too long to conduct any cross-examinations and therefore should not be allowed to do so, to an argument that the conduct of cross-examinations was unduly distracting and therefore no steps should be taken in connection with Catalyst's claims. I am further advised by counsel and verily believe that Justice Morawetz did not accept these submissions, advised counsel that Catalyst would be allowed to complete the steps required to adjudicate the issues it had raised in an orderly manner, and urged counsel to cooperate to make the necessary arrangements. In addition, at the July 5th 9:30 am attendance, Justice Morawetz arranged for a two-hour motion to be heard one week later to deal with voting issues which were anticipated to arise in the CBCA proceedings, by reason of the conflicts of interest and other issues which Catalyst had raised. Now shown to me and marked as **Exhibit "R"** is a true copy of the Endorsement of Justice Morawetz from the July 5, 2013 attendance.

29. Instead of litigating the voting issues in a contested motion on the date arranged by Justice Morawetz, Catalyst instructed its counsel to resolve these issues through the delivery of a Notice of Motion in the CBCA proceedings, so that the issues could be determined at a later date

by the Court, as the need arose. Now shown to me and marked as **Exhibit "S"** is a copy of this Notice of Motion and the emails confirming this resolution.

30. Concurrent with the above events Catalyst continued to follow the affairs of the Mobility Group, as best it could. Other than the receipt of the June 30, 2013 financial statements and report, quoted above and referred to in my affidavit herein dated September 30, 2013, Catalyst did not have access to any other internal information or financial records of the Mobilicity Group: unlike the Conflicted First Lien Holders (the proponents of the DIP financing filed with the Court by the Mobilicity Group on September 30, 2013), Catalyst did not have access to the internal cashflow statements prepared by the Mobilicity Group on a bi-weekly basis,[7] was not privy to any other financial options or alternatives available to the Mobilicity Group, was not kept apprised of the status of the Mobilicity Group's efforts to negotiate a sale of Opco, and received no other information from the Mobilicity Group about its' intentions or affairs.

31. Instead, Catalyst's information about these matters was derived primarily from newspaper reports referring to the Mobilicity Group. Now shown to me and marked as **Exhibit "T"** is a true copy of some of the newspaper reports pertaining to Mobilicity during this period. These reports reflect, among other things, the fact that by early September 2013 (i) Verizon (a large U.S. based potential buyer of Opco) had announced that it would <u>not</u> be entering the Canadian market, (ii) reports were circulating (and immediately denied by the Mobilicity Group) that the Mobilicity Group was on the verge of entering into a transaction with a competitor to transfer Opco's subscribers, pending further attempts to sell Opco's spectrum, and (iii) reports

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[7] The terms of the February Financing required that such projections be prepared and provided to the Conflicted First Lien Holders on a regular basis. Catalyst has requested that these materials be provided to it, but the Mobilicity Group and the Conflicted First Lien Holders have refused to do so.

were also circulating (which were not denied) that the Conflicted First Lien Holders were not prepared to loan any additional funds to the Mobilicity Group[8].

32. In these circumstances, Catalyst did not continue the cross-examination of Mr. Aziz as had been planned. Catalyst did write to the Mobilicity Group renewing its earlier efforts to engage in a dialogue about potential financing. Now shown to me and marked as **Exhibit "U"** is a true copy of this correspondence.

33. Over the next two weeks Catalyst and representatives of the Mobilicity Group engaged in without prejudice discussions regarding such potential financing, but were unable to arrive at any agreement. Given the anticipated depletion of the Mobilicity Group's cash resources by September 20, 2013, the looming obligations under the First Lien Notes to make a $9.1 Million interest payment on September 30, 2013, Catalyst's continued lack of access to the internal financial records, cashflow projections, and the lack of any information about any other plans or options being considered by the Mobilicity Group, Catalyst concluded that there was no alternative but to initiate proceedings itself under the CCAA.

Catalyst's Current Concerns

34. Catalyst has very serious concerns about the value of the security held for the First Lien Notes. Catalyst does not believe that the Telus Transaction, which has been the subject of prior filings and submissions to this Court, is a reasonable indication of the current value of the

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[8] As at early September 2013, so far as Catalyst is aware, those parties had not advanced the balance of the follow-on financing provided for in the February Financing referred to above, and the Applicants' current filing appears to release the Conflicted First Lien Holders from any such obligation.

security held in connection with the First Lien Notes. Catalyst also believes that the value of this security is deteriorating with each passing week.

35. In this regard, the cashflow projections that have been filed with this Court cannot be reconciled with the projections earlier circulated by the Mobilicity Group, or the statements contained in earlier affidavits filed on behalf of the Mobilicity Group. Based upon the material that is currently available to Catalyst, it appears that the Mobilicity Group has recently decided to substantially reduce the expenditures by Opco which had previously been planned to maintain Opco's business, pending attempts to negotiate a sale of Opco's business. It also appears that the effect of such reductions has significantly impacted Opco's ability to retain its subscribers – according to the material most recently filed by the Mobilicity Group almost 50,000 subscribers have been lost by the Mobilicity Group between June 30 and September 30, 2013. This represents a dramatic acceleration of the erosion of Opco's customer base. This loss has a significant potential impact upon the value of Opco's business.[9] It further appears that these reduced expenditures by Opco will continue over the next several months: the cash flow projections filed by Opco and the highly conditional DIP financing reflected therein guarantees that Opco will be maintained on life support, based upon expenditures at rock bottom levels going forward. If the loss of subscribers continues at the accelerated rate experienced since June 30, 2013, by the end of the year Opco's subscriber base will be approximately ½ of the number of subscribers reported by Opco as at December 31, 2012.

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[9] At the time of negotiation of the failed Telus Transaction, Opco's customer base was approximately 250,000 subscribers.

36. In addition, Catalyst does not believe that the Telus Transaction is a reliable proxy for any prospective sale of Opco's business. In this regard, it is far from clear that the Federal Government will ever allow such a transaction to be consummated; based upon recent public statements by the Industry Canada[10], I believe that such approval will never be obtained. Even if a sale of Opco's spectrum to Telus were to be permitted after the expiry of the five year moratorium described in the June 4, 2013 press release referred to above, such a transaction would not be completed for many months. By that time, at current rates, Opco's subscriber base would likely be non-existent. In my view, it is highly unlikely that any transaction with Telus on the terms negotiated previously can ever be achieved and the ability of the First Lien Holders to recover the amounts owed to them is seriously in jeopardy.

37. Catalyst is also very concerned that the DIP financing approved by the Court on September 30, 2013 was arrived at as a result of a process that was not fair, transparent, or even-handed. The parties who provided that financing were privy to internal information regarding the business affairs, cashflow projections, financial results, and restructuring plans and negotiations that were known <u>only to those parties</u>. In addition, although the Mobilicity Group has asserted that it has fully canvassed available alternatives for such financing, based upon the information known to Catalyst and described herein such efforts were incomplete and untimely, at best.

38. Accordingly, Catalyst has written to the Monitor with a proposal to conduct a fair and open and expeditious process to solicit DIP financing for the Mobilicity Group on terms which

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[10] Now shown to me and marked as **Exhibit "V"** are copies of reports confirming the Government policy against sales of 2008 Spectrum to incumbents like Telus.

are superior to the DIP financing approved on September 30, 2013. Now shown to me and marked as **Exhibit "W"** is a true copy of the letter written to the Monitor regarding this proposal.

39. Finally, Catalyst is very concerned - having regard to the material conflicts of interest and the history and events described above and in the affidavit materials filed in the earlier legal proceedings referred to herein – that it has been excluded from the processes required to effect a beneficial sale of Opco, that the parties who have controlled that process have acted in a manner designed to advance their own interests at the Holdco level, at the expense of the legal rights and interests of the stakeholders at the Opco level, and that there is a need for a fair mechanism to enable all stakeholders to be involved in the process required to implement a beneficial sale of Opco's business. Consequently, in the letter referred to above, Catalyst has also requested the Monitor to consider and discuss appropriate terms for the creation of a Creditors Committee to alleviate these concerns.

40. Finally, aside from certain provisions of the Initial CCAA Order that are at variance with the model CCAA Order and which may require a clarification, Catalyst has the following additional substantive concerns: (i) paragraph 49 of the Initial CCAA Order could be read as sanctioning and approving the terms of the February Financing, including the $8.25 MM bridge fee, whose validity was an issue in the oppression proceedings, as well as the extraordinary control and veto provisions in favour of the Conflicted First Lien Holders referred to in footnote 3 above; and (ii) the DIP loan agreement also contains provisions which could be read as sanctioning the February Financing and which appear to perpetuate the control provisions referred to above; (iii) the DIP loan agreement also is subject to several open ended discretionary

conditions in favour of the DIP lenders which may well eliminate any DIP funding obligations, prior to the first advance provided for in the cashflows which have been filed by the applicants.

41. 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 9th day of October, 2013.	)))))	
Commissioner for Taking Affidavits (or as may be)	))	James Riley

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

AFFIDAVIT OF JAMES RILEY
(sworn October 9, 2013)

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Lawyers for
The Catalyst Capital Group Inc.

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

MOTION RECORD
OF THE CATALYST CAPITAL GROUP INC.

(Returnable October 17, 2013)

BELLMORE & MOORE
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Solicitors for the Applicant

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

Applicants

NOTICE OF MOTION
(returnable October 17, 2013)

THE CATALYST CAPITAL GROUP INC. ("**Catalyst**") will make a motion to a Judge presiding over the Commercial List on Thursday, the 17th day of October, 2013 at 10:00 a.m., or on an alternative date to be scheduled by order of this Court, at the Courthouse, 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

(a) an Order, *inter alia*:

(i) abridging the time for service of this Notice of Motion and the Motion Record herein, and validating service thereof, if necessary;

(ii) providing direction to the Ernst & Young Inc., in its capacity as court-appointed monitor in these proceedings (the "**Monitor**"), with respect to a debtor-in-possession ("**DIP**") financing solicitation process, in accordance with fair and proper procedures to be proposed by the Monitor and approved by the Court;

(iii) establishing a committee of creditors of Data & Audio-Visual Enterprises Wireless Inc. ("**Opco**"), the composition of which shall be determined by further Order of the Court to be made with the benefit of a recommendation from the Monitor, but which shall include at least one nominee of Catalyst (the "**Opco Creditor Committee**");

(iv) directing the Applicants to pay the reasonable and documented fees and expenses of legal and financial advisors to the Opco Creditor Committee, and adding the fees and expenses of such advisors to the Administration Charge (as set out and defined in the initial order of Newbould J., dated September 30, 2013 (the "**Initial Order**"));

(v) declaring that the Applicants shall indemnify the members of the Opco Creditor Committee against obligations and liabilities that they may incur as members of the Opco Creditor Committee, except to the extent that, with respect to any member of the Opco Creditor Committee, the obligation or liability was incurred as a result of his or her gross negligence or wilful misconduct, and granting a charge in favour of the Opco Creditor Committee as security for such indemnity, which charge shall not exceed $5 million and shall rank *pari passu* with the Directors' Charge (as set out and defined in the Initial Order);

(vi) varying the Initial Order, as follows:

(1) by deleting paragraphs 48 and 49 of the Initial Order in their entirety; and

(2) by deleting all references therein to payment by the Applicants of any legal or other professional fees and disbursements of the Ad Hoc Committee of Noteholders, and removing such fees and disbursements from the Administration Charge;

(vii) directing legal counsel to the Ad Hoc Committee of Noteholders to reimburse the Applicants all amounts paid by them in respect of the Ad Hoc Committee of Noteholders' legal fees and disbursements, under the Initial Order or otherwise; and

(b) such further and other relief as counsel may advise and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

(a) the relief sought is appropriate having regard to the facts and circumstances set out in the Affidavit of James C. Riley, sworn October 9, 2013;

(b) paragraphs 68 and 69 of the Initial Order;

(c) the provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(d) Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 and 39 of the *Rules of Civil Procedure*; and

(e) such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) the Affidavit of James C. Riley, sworn October 9, 2013, and the exhibits thereto; and

(b) such further and other material as counsel may advise and this Court may permit.

October 9, 2013

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David C. Moore [LSUC 16996U]

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Lawyers for the moving party,
The Catalyst Capital Group Inc.

TO: THE ATTACHED SERVICE LIST

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

NOTICE OF MOTION
(returnable October 17, 2013)

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Lawyers for the moving party,
The Catalyst Capital Group Inc.

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

Applicants

AFFIDAVIT OF JAMES RILEY
(Sworn October 9, 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.

[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 support of a motion pursuant to the "comeback" clause contained in the Initial CCAA Order herein, which was granted on September 30, 2013, the first return date for this proceeding. The contents of this affidavit:

(a) address and respond to certain assertions and allegations contained in the Applicants' 800+ page Motion Record, which Catalyst first received shortly after 8:00 am on September 30, 2013;

(b) outline the reasons for the relief and directions sought by Catalyst pursuant to the comeback clause, including: (i) approval of, or in the alternative, directions for a process which Catalyst has requested be established and implemented by the Monitor with respect to Debtor in Possession ("**DIP**") funding for the Mobilicity Group; and (ii) the appointment of a Creditors' Committee to allow for appropriate disclosure and fair and even treatment of all creditors affected by these proceedings.

3. Unlike the other parties who have appeared and taken a position in these and previous proceedings, Catalyst's only investment in the Mobilicity Group is through its position as a holder of First Lien Notes issued by Opco, in respect of which Opco granted a first lien over all of its assets and undertakings. The First Lien Notes were issued pursuant to and in accordance with the provisions of a First Lien Indenture dated April 20, 2011, following circulation of an Offering Memorandum which was used to solicit investors in the First Lien Notes. Now shown to me and marked as **Exhibit "A"** and **"B"** respectively, are true copies of the First Lien Indenture and the Offering Memorandum.

4. Catalyst's rights, interests and entitlements are derived from the terms of the First Lien Notes. Catalyst's objectives in the current proceedings, Catalyst's oppression application, and in the CBCA proceedings referred to herein are and have been to ensure that its legal rights as the owner of over $60 Million of First Lien Notes are honoured and protected. Contrary to what has been alleged from time to time by the Mobilicity Group and others, Catalyst has not sought and does not seek any inappropriate advantages or rights in the current or in any of the earlier court proceedings. Rather Catalyst seeks to ensure that:

(a) its rights to be paid interest and repaid the principal owing under the First Lien Notes;

(b) its right to a "Make-Whole" premium which is required to be paid in certain circumstances set out in the First Lien Indenture; and

(c) its right to insist that the amending and other substantive provisions of the First Lien Indenture,

are all honoured and adhered to.

5. From Catalyst's standpoint, it is critical for the Court to understand the practical implications of the structure of the Mobilicity Group, the debt obligations, assets, and potential recoveries at each of Opco and Holdco, and the relationship of these matters to the rights of the First Lien Holders. These matters are depicted in the summary chart which is now shown to me and marked as **Exhibit "C"** (the "**Chart**").

6. As appears from the **Chart**, the aggregate obligations of Opco on account of the First Lien Notes (including the Make-Whole), the Second Lien Notes, and the unsecured trade and other liabilities exceed $445 Million. In this context, there are several very important realities and conflicts. First, unless a transaction for the sale of Opco yields net proceeds in excess of $445 Million, the value of Holdco's shareholding interest in Opco is zero and the recovery of any of the stakeholders at the Holdco level will be limited to the value of the tax losses at Holdco. Second, the interests of the stakeholders of Opco and Holdco are materially different. For the Opco stakeholders and in particular the First Lien Holders, it is desirable that a sale transaction for the assets of Opco be completed as expeditiously as possible, before the value of Opco's assets deteriorates further. In contrast it is in the interests of the Holdco stakeholders to gamble by trying to achieve a sale transaction at the absolute highest price possible, regardless of how long that takes, or the risks involved: unless sale proceeds at the highest possible range set out in the Chart are realized their interests have no value. Thirdly, it is in the interests of Holdco and its stakeholders to structure a sale transaction which effectively disregards the separate corporate existence of Opco and Holdco and allows the creditors of Holdco to share in the value of Opco in priority to Opco's unsecured creditors.

7. The conflicts inherent in the above structure and realities are exacerbated by the fact that a substantial portion of the First Lien Holders (approximately 50% by Catalyst's approximation) also are very substantial creditors at the Holdco level, whose claims against Holdco are currently worthless. These are the creditors who participated in the February Financing referred to below. Given the size of their investments in Holdco, it is in the interests of these creditors (the "**Conflicted First Lien Holders**") to arrange or orchestrate transactions at

the Opco level which will result in the funds which would otherwise be used to honour obligations under the First Lien Notes, being made available to reduce the debt at Holdco. Efforts have already been made by the Conflicted First Lien Holders to achieve this result.

Response to Certain Aspects of the Applicants' September 29, 2013 Motion Record

8. In its materials, Mobilicity paints Catalyst as a persistent and unreasonable litigator who has aggressively attacked the Mobilicity Group to advance inappropriate interests and objectives. According to the Mobility Group, this has been an unwarranted drain on its resources; Catalyst's oppression proceedings are characterized as being an unwarranted "nuisance". Mobilicity's filing also implies that it has thoroughly and carefully canvassed all of the options open to it, in an open and appropriate process.

9. I do not believe that the foregoing characterizations of Catalyst's actions or the description of the prior proceedings and events are accurate or fair.

(a) The History of Catalysts' Oppression Application

10. As noted above, Catalyst's intentions throughout have been to protect its legal interests, starting with the initiation of oppression proceedings in relation to the February Financing described in several affidavits filed previously with this Court. The context in which these proceedings were initiated and Catalyst's concerns in connection with the February Financing were first detailed in the Affidavit of Gabriel de Alba, dated February 26, 2013, and explained further in a second Affidavit of Mr. De Alba dated May 9, 2013. Copies of these Affidavits are now shown to me and marked as **Exhibits "D" and "E"** hereto.

11. As appears from these materials, Catalyst was (and remains) in the dark about many aspects of the February Financing. However, based upon the documents that had been disclosed to it, Catalyst commenced its oppression proceedings because of the following issues and concerns:

(a) the February Financing included a bridge fee of $8.25 Million, which was deemed to be fully earned upon an initial advance of $15 Million. This fee was immediately paid through the issuance of Second Lien Notes to the Conflicted First Lien Holders. These Second Lien Notes were due and payable by Opco on May 30, 2013, regardless of whether any further advances were made under the February Financing;[2]

(b) the initial advances contemplated by the February Financing were subject to numerous conditions and totalled $35 Million. These advances were evidenced by the issuance of additional Second Lien Notes by Opco, which also fell due on May 30, 2013. In addition, the February Financing contemplated a "follow-on" financing which was to be used to repay the Second Lien Notes and provide additional funds of approximately $30 MM to Opco to use in its operations;

(c) the Second Lien Notes were secured by way of an encumbrance against the assets of Opco, including the Spectrum purchased by Opco in 2008 (Opco's most valuable asset). This encumbrance was prohibited by terms of the First Lien Indenture, which contained protections in favour of the First Lien Holders for the

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[2] As indicated in Mr. De Alba's affidavits, this fee appears to contravene the criminal interest rate provisions of the Criminal Code.

purpose of avoiding a situation in which holders of new encumbrances against the security granted in relation to the First Lien Notes, although technically subordinate to the First Lien Notes, could precipitate a sale of that security at a time or in circumstances contrary to the wishes or adverse to the interests of the First Lien Holders.

(d) The materials which had been disclosed to Catalyst indicated that in order to circumvent the above prohibition, the Conflicted First Lien Holders (who received Second Lien Notes in payment of the $8.25MM fee referred to above) unilaterally enacted an amendment to the First Lien Indenture which modified the prohibition referred to above. The materials provided to Catalyst also indicated that although this amendment was detrimental to the interests of the First Lien Holders as a group, it was enacted without notice by the Conflicted First Lien Holders, contrary to the amendment provisions of the First Lien Indenture;

(e) the foregoing issues and concerns were aggravated by the fact that the usual terms necessary to provide for a fully effective subordination, normally contained in an inter-creditor agreement, had not been provided for in the February Financing;

(f) all of this was capped by the fact that instead of containing the usual and customary fiduciary out provisions, the February Financing contained several covenants which gave extraordinary rights to the Conflicted First Lien Holders to monitor and prohibit alternative financing discussions, and to veto any further financings that might become available to Opco.[3]

12. Following the institution of Catalyst's oppression application, the following things happened:

(a) Mobilicity brought a motion to stay Catalyst's claim. This motion was heard and decided in favour of Catalyst by Her Honour Judge Mesbur in a decision dated April 11, 2013. Now shown to me and marked as **Exhibit "G"** is a true copy of said decision;

(b) In dismissing Mobilicity's motion, Judge Mesbur's reasons for decision concluded with the following direction:

> "[45] Since the application will proceed, it should proceed quickly to resolution. To that end, the parties are directed to schedule and attend a 9:30 appointment within one week of the release of these reasons to fix a speedy timetable for all steps necessary in the application, including the date of hearing."

(c) The parties subsequently attended before His Honour Judge Morawetz on April 17, 2013, at which time a schedule for the steps required to adjudicate Catalyst's

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[3] These special provisions are highlighted in the attached extract from the Note Purchase Agreement relating to the Second Lien Notes, a true copy of which is now shown to me and marked as **Exhibit "F"**. According to testimony elicited from Mr. Aziz about this financing (which had been entered into several months before his appointment as CRO), the Holdco Board agreed to these provisions, and was advised that no fiduciary out was necessary, because it was advised that no other creditor was willing to consider bridge financing. This was erroneous as Catalyst's counsel had expressed a willingness to consider providing bridge financing. The portion of Mr. Aziz's testimony referring to this issue is included in Exhibit "P" herein, referred to below.

application, culminating in a one day hearing on May 24, 2013, was fixed on consent;

(d) I am advised by David C. Moore and verily believe that when the above schedule was fixed, counsel for the Mobilicity Group and the other Respondents indicated that there might be a filing by Mobilicity under the CBCA in the near future, and that if such a filing occurred, the steps which had been agreed upon might have to be coordinated with any subsequent proceedings;

(e) On April 24, 2013, the Mobilicity Group instituted proceedings under the CBCA in relation to two potential reorganizations – a detailed Recapitalization Plan which contemplated financing of $75MM (part of which was to be used to repay the Second Lien Notes issued in the February Financing whose propriety was the subject of the oppression proceedings commenced by Catalyst) and an Acquisition Plan. The Acquisition Plan contained no details of any sale transaction, because the Mobilicity Group had not been successful in arriving at any agreement to sell any of the assets owned by Opco or Holdco. Now shown to me and marked as **Exhibits "H"** and **"I"** are true copies of the Order and Reasons for Decision of His Honour Judge Wilton-Seigel with respect to these CBCA proceedings dated April 25, 2013 and May 1, 2013, respectively;

(f) I am advised by David C. Moore and verily believe that following the initiation of the above CBCA proceedings, the Mobilicity Group did not suggest or argue that the oppression proceedings which were the subject of Justice Mesbur's ruling were a "nuisance" or that they should be stayed or postponed. Rather, I am advised by David C. Moore and verily believe that the Mobilicity Group suggested - in light of the fact that the issues which had been raised by Catalyst had a potential impact upon the voting procedures in the CBCA proceedings and upon the fairness of certain of the transactions contemplated in the Recapitalization Plan - that the two proceedings should be heard together.

(g) On May 16, 2013, following the delivery of additional materials pursuant to the scheduling arrangements referred to above, the Mobilicity Group announced that it had entered into a sale transaction with Telus (the "**Telus Transaction**") and that it intended to proceed with a revised Acquisition Plan instead of the Recapitalization Plan which had been previously circulated. This announcement was made at a time when the parties were on the verge of conducting the cross-examinations on the affidavit materials which had been filed by both sides. In short order, the Mobilicity Group delivered a lengthy application record returnable on May 28, 2013 seeking approval for the amended and newly circulated Acquisition Plan based upon the Telus Transaction which had just been announced. The Mobilicity Group asserted that it was critical to proceed without any delay regardless of the fact that the steps which had been previously agreed upon to complete the record through cross-examinations had not and could not be completed in time for such a hearing.

13. Now shown to me and marked as **Exhibit "J"** is a true copy of an affidavit which I swore on May 27, 2013 which details certain of the above events. This affidavit was prepared on

an urgent basis over the weekend of May 25-26, 2013 to support a request by Catalyst for an adjournment of the hearing date of May 28, 2013. Said affidavit also described the components of the Telus Transaction by which its proponents had created a structure which would have avoided payment of the Make-Whole premium, despite the fact that the Telus Transaction provided for the immediate repayment of the First Lien Notes several years before they fell due (one of the events that triggers entitlement to the Make-Whole under the First Lien Indenture). In addition, my May 27 affidavit refers to communications from the Mobilicity Group confirming that the intention was that the proceeds derived from the Telus Transaction would not be used to pay the Make-Whole; rather, the Conflicted First Lien Holders had reserved to themselves the right to elect a distribution of funds that diverted proceeds otherwise available to pay the Make-Whole, to pay obligations owed to them at the Holdco level.

14. The foregoing potential outcome confirmed the worst fears held by Catalyst: namely that the Conflicted First Lien Holders had participated in the February Financing with an intention to implement a sale of Opco adverse to the interest of holders of First Lien Notes who did not hold debt at the Holdco level, by structuring that transaction in a manner which did not honour the Make-Whole provisions and which diverted over $70 Million of the Opco sale proceeds to debt at the Holdco level. In these circumstances, as at May 27, 2013 Catalyst was adamantly opposed to the Acquisition Plan and delivered my May 27, 2013 affidavit in support of a motion to adjourn the hearing the following day.

15. Negotiations between the parties continued on May 27 and May 28, 2013. These negotiations concluded very shortly before the return of the approval hearing before His Honour Judge Campbell which is referred to in the Mobilicity Group's Application Record. As stated in

the Application Record herein, His Honour Judge Campbell did grant an Approval Order for the revised Acquisition Plan based upon the Telus Transaction on May 28, 2013, and Catalyst acquiesced in the granting of said Order. However, the Mobilicity Group's Application Record did not attach that order, nor did it refer to the aforementioned negotiations, or to the fact that the reason for Catalyst's acquiescence was that the Mobilicity Group agreed that the order which the Mobilicity Group had been seeking for the approval of the Telus Transaction was amended at the last minute to include specific provisions to address Catalyst's concerns and objections. In particular, Justice Campbell's Order contained provisions which created a fund of $71 Million (less certain fees) to be set aside out of the sale proceeds, which preserved Catalyst's ability to seek payment of the Make-Whole out of those proceeds, which confirmed that the election referred to above by the Conflicted First Lien Holders to extinguish the Make-Whole would not be exercised, and which reserved Catalyst's entitlement and ability to advance and argue, among other things, all of the oppression issues previously raised by it. Now shown to me and marked as **Exhibit "K"** is a true copy of the Order of His Honour Judge Campbell dated May 28, 2013 in which the aforementioned provisions have been highlighted.

(b) The Rejection of the Telus Transaction; Subsequent Events

16. On June 4, 2013 the Federal Government announced that it was not prepared to approve the Telus Transaction. In the Press Release issued that day, Industry Canada made it clear that no sale of any Spectrum purchased by Opco in 2008 to any incumbent in the wireless industry would even be considered prior to the expiry of the 5-year moratorium referred to in the release. The Press Release also made it clear that even after the expiry of the moratorium, there could be no assurance that any such transaction would be approved, given Industry Canada's

stated intention to carefully scrutinize any such transfer of Spectrum in light of its concerns about the undue concentration of Spectrum in the hands of incumbents. Now shown to me and marked as **Exhibit "L"** is a true copy of this Press Release.

17. Catalyst recognized that the refusal of Industry Canada to approve the Telus Transaction would create substantial difficulties and uncertainties for the Mobility Group and would adversely affect any attempt to sell Opco's business.[4]

18. As a result, on June 6, 2013 counsel for Catalyst forwarded a letter signed by Catalyst and two proposals for financing to counsel for Mobilicity by way of the following email:

> "Further to my email yesterday, I am attaching the signed letter and term sheets from Catalyst Capital Group Inc. Please note that the ranking of the DIP is to be junior only to the First Lien Notes. **Representatives of Catalyst would be pleased to meet with representatives of Mobilicity to discuss the attachments when convenient.**" (emphasis added)

Now shown to me and marked as **Exhibit "M"** is a true copy of this email, the signed letter referred to therein, and the two terms sheets proposed by Catalyst for discussion at that time.

19. Counsel for the Mobilicity Group, Mr. Walied Soliman, responded on June 6, 2013 as follows:

> "Jon – thank you for this. We are currently in an exclusivity with Telus and therefore cannot entertain these term sheets at this time. Our bankers are keeping a log of incoming offers such as yours, which will be reviewed at the appropriate time."

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[4] This impact was confirmed in the Affidavit William Aziz dated September 25, 2013, which the Mobilicity Group filed in support of a request to adjourn Catalyst's CCAA proceeding. In that affidavit, Mr. Aziz swore (paragraph 44) that: **"The June 4, 2013 Industry Canada decision has created an environment of uncertainty for the Mobilicity Group and its stakeholders and has adversely impacted the Mobilicity Group's opportunities to progress discussions with potential acquirers at this time."**

Now shown to me and marked as **Exhibit "N"** is a true copy of said email.

20. Catalyst did not understand why any exclusivity provisions with Telus could create an impediment to a discussion about Catalyst's proposals, in light of the fact that it was clear that the Telus Transaction would not be proceeding and had been or was about to be formally terminated. Consequently, Mr. Levin sent a further email to Mr. Soliman asking for clarification:

> "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 their deal has been frustrated."

Now shown to me and marked as **Exhibit "O"** is a true copy of said email.

21. To the best of my knowledge, Mr. Levin never received any response to this inquiry. Similarly, no one from the Mobilicity Group ever contacted Catalyst in response to the invitation that had been extended to discuss these proposals.

22. As described below, Mr. Aziz was ultimately cross-examined on certain of the affidavits that he had filed in the aforementioned proceedings on August 16, 2013. During that cross-examination Mr. Aziz confirmed that the Mobilicity Group had never contacted Catalyst to discuss either of the above proposals. During his cross-examination Mr. Aziz also testified as follows:

(a) with reference to the "other offers" referred to in the emails above, the Mobilicity Group had received three additional financing proposals from third parties, but, as in the case of the Catalyst proposals, had not had any discussions with those third parties about these financing alternatives;

(b) the provisions of the February Financing which gave special rights to the Conflicted First Lien Holders to monitor and prohibit financing discussions, and to veto any alternative financing proposals, had not been amended and had not been waived:

> "Mr. Moore: So my question is, have those provision been amended at all?
>
> Mr. Pasparakis: You want to know if **the specific provisions that deal with the preclusion of discussions have amended?**
>
> Mr. Moore: Yes.
>
> Mr. Pasparakis: To your knowledge, do you know?
>
> The Deponent: **I do not believe they have.**"
>
> (emphasis added)

23. At the time when the above evidence was given, the context was that the Mobilicity Group was in the process of circulating interim financial statements and a report for the period ending June 30, 2013, in which it stated:

> "Based on Management's forecast as at August 14, 2013, the available cash resources to carry on the Company's operations could be <u>depleted by the week ending September 20, 2013</u>."

and further that:

"The Company's ability to continue as a going concern is dependent upon its ability to obtain the additional funding required to meet the Company's cashflow needs."[5]

24. However, despite these circumstances, Mr. Aziz testified that the reason why the Mobilicity Group had not had any discussions about such financing options was:

"We haven't seen the need to seek those discussions at this juncture."

25. Now shown to me and marked as **Exhibit "P"** is a true copy of the extract from Mr. Aziz's cross-examination which relates to the above testimony, as well as certain other matters referred to herein.[6]

26. As noted above and confirmed in the aforementioned evidence, Catalyst did not receive any response to its attempt to engage in a dialogue with the Mobilicity Group regarding potential financing alternatives in early June. Instead, over the next several weeks Mobilicity issued a series of announcements with respect to the Recapitalization Plan that had been detailed in its original CBCA filing on April 24, 2013, and which provided for repayment of the Second Lien Notes, which were the subject of the issues raised by Catalyst in the proceedings described by Justice Mesbur. Now shown to me and marked as **Exhibit "Q"** are true copies of the various press releases issued by the Mobilicity Group in connection with proposed votes regarding the Recapitalization Plan during this period.

27. In light of the above events, Catalyst took steps to complete the record required to adjudicate these issues, including the cross-examination of Mr. Aziz. Catalyst did this because it

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[5] These statements are contained in Exhibit J of the Applicant's Application Record, page 6837.

[6] The cross-examination was not completed on August 16, 2013; the parties agreed to adjourn it to a mutually convenient date in early September, coinciding with Mr. Aziz's return from a short holiday.

did not want to be faced with the same difficulties it had previously encountered when the Mobilicity Group had attempted to force on the approval hearing for its revised Acquisition Plan, in circumstances where the fairness issues which had been raised by Catalyst's oppression proceedings could not properly be argued because the record was not complete.

28. I am advised by Mr. Moore and verily believe that a 9:30 a.m. attendance before Mr. Justice Morawetz took place on July 5, 2013 to discuss the scheduling arrangements for these matters, including the cross-examination of Mr. Aziz. I am further advised by Mr. Moore and verily believe that at this 9:30 attendance Catalyst was met with various arguments and objections, ranging from a submission that Catalyst had waited too long to conduct any cross-examinations and therefore should not be allowed to do so, to an argument that the conduct of cross-examinations was unduly distracting and therefore no steps should be taken in connection with Catalyst's claims. I am further advised by counsel and verily believe that Justice Morawetz did not accept these submissions, advised counsel that Catalyst would be allowed to complete the steps required to adjudicate the issues it had raised in an orderly manner, and urged counsel to cooperate to make the necessary arrangements. In addition, at the July 5th 9:30 am attendance, Justice Morawetz arranged for a two-hour motion to be heard one week later to deal with voting issues which were anticipated to arise in the CBCA proceedings, by reason of the conflicts of interest and other issues which Catalyst had raised. Now shown to me and marked as **Exhibit "R"** is a true copy of the Endorsement of Justice Morawetz from the July 5, 2013 attendance.

29. Instead of litigating the voting issues in a contested motion on the date arranged by Justice Morawetz, Catalyst instructed its counsel to resolve these issues through the delivery of a Notice of Motion in the CBCA proceedings, so that the issues could be determined at a later date

by the Court, as the need arose. Now shown to me and marked as **Exhibit "S"** is a copy of this Notice of Motion and the emails confirming this resolution.

30. Concurrent with the above events Catalyst continued to follow the affairs of the Mobility Group, as best it could. Other than the receipt of the June 30, 2013 financial statements and report, quoted above and referred to in my affidavit herein dated September 30, 2013, Catalyst did not have access to any other internal information or financial records of the Mobilicity Group: unlike the Conflicted First Lien Holders (the proponents of the DIP financing filed with the Court by the Mobilicity Group on September 30, 2013), Catalyst did not have access to the internal cashflow statements prepared by the Mobilicity Group on a bi-weekly basis,[7] was not privy to any other financial options or alternatives available to the Mobilicity Group, was not kept apprised of the status of the Mobilicity Group's efforts to negotiate a sale of Opco, and received no other information from the Mobilicity Group about its' intentions or affairs.

31. Instead, Catalyst's information about these matters was derived primarily from newspaper reports referring to the Mobilicity Group. Now shown to me and marked as **Exhibit "T"** is a true copy of some of the newspaper reports pertaining to Mobilicity during this period. These reports reflect, among other things, the fact that by early September 2013 (i) Verizon (a large U.S. based potential buyer of Opco) had announced that it would <u>not</u> be entering the Canadian market, (ii) reports were circulating (and immediately denied by the Mobilicity Group) that the Mobilicity Group was on the verge of entering into a transaction with a competitor to transfer Opco's subscribers, pending further attempts to sell Opco's spectrum, and (iii) reports

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[7] The terms of the February Financing required that such projections be prepared and provided to the Conflicted First Lien Holders on a regular basis. Catalyst has requested that these materials be provided to it, but the Mobilicity Group and the Conflicted First Lien Holders have refused to do so.

were also circulating (which were not denied) that the Conflicted First Lien Holders were not prepared to loan any additional funds to the Mobilicity Group[8].

32. In these circumstances, Catalyst did not continue the cross-examination of Mr. Aziz as had been planned. Catalyst did write to the Mobilicity Group renewing its earlier efforts to engage in a dialogue about potential financing. Now shown to me and marked as **Exhibit "U"** is a true copy of this correspondence.

33. Over the next two weeks Catalyst and representatives of the Mobilicity Group engaged in without prejudice discussions regarding such potential financing, but were unable to arrive at any agreement. Given the anticipated depletion of the Mobilicity Group's cash resources by September 20, 2013, the looming obligations under the First Lien Notes to make a $9.1 Million interest payment on September 30, 2013, Catalyst's continued lack of access to the internal financial records, cashflow projections, and the lack of any information about any other plans or options being considered by the Mobilicity Group, Catalyst concluded that there was no alternative but to initiate proceedings itself under the CCAA.

Catalyst's Current Concerns

34. Catalyst has very serious concerns about the value of the security held for the First Lien Notes. Catalyst does not believe that the Telus Transaction, which has been the subject of prior filings and submissions to this Court, is a reasonable indication of the current value of the

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[8] As at early September 2013, so far as Catalyst is aware, those parties had not advanced the balance of the follow-on financing provided for in the February Financing referred to above, and the Applicants' current filing appears to release the Conflicted First Lien Holders from any such obligation.

security held in connection with the First Lien Notes. Catalyst also believes that the value of this security is deteriorating with each passing week.

35. In this regard, the cashflow projections that have been filed with this Court cannot be reconciled with the projections earlier circulated by the Mobilicity Group, or the statements contained in earlier affidavits filed on behalf of the Mobilicity Group. Based upon the material that is currently available to Catalyst, it appears that the Mobilicity Group has recently decided to substantially reduce the expenditures by Opco which had previously been planned to maintain Opco's business, pending attempts to negotiate a sale of Opco's business. It also appears that the effect of such reductions has significantly impacted Opco's ability to retain its subscribers – according to the material most recently filed by the Mobilicity Group almost 50,000 subscribers have been lost by the Mobilicity Group between June 30 and September 30, 2013. This represents a dramatic acceleration of the erosion of Opco's customer base. This loss has a significant potential impact upon the value of Opco's business.[9] It further appears that these reduced expenditures by Opco will continue over the next several months: the cash flow projections filed by Opco and the highly conditional DIP financing reflected therein guarantees that Opco will be maintained on life support, based upon expenditures at rock bottom levels going forward. If the loss of subscribers continues at the accelerated rate experienced since June 30, 2013, by the end of the year Opco's subscriber base will be approximately ½ of the number of subscribers reported by Opco as at December 31, 2012.

[9] At the time of negotiation of the failed Telus Transaction, Opco's customer base was approximately 250,000 subscribers.

36. In addition, Catalyst does not believe that the Telus Transaction is a reliable proxy for any prospective sale of Opco's business. In this regard, it is far from clear that the Federal Government will ever allow such a transaction to be consummated; based upon recent public statements by the Industry Canada[10], I believe that such approval will never be obtained. Even if a sale of Opco's spectrum to Telus were to be permitted after the expiry of the five year moratorium described in the June 4, 2013 press release referred to above, such a transaction would not be completed for many months. By that time, at current rates, Opco's subscriber base would likely be non-existent. In my view, it is highly unlikely that any transaction with Telus on the terms negotiated previously can ever be achieved and the ability of the First Lien Holders to recover the amounts owed to them is seriously in jeopardy.

37. Catalyst is also very concerned that the DIP financing approved by the Court on September 30, 2013 was arrived at as a result of a process that was not fair, transparent, or even-handed. The parties who provided that financing were privy to internal information regarding the business affairs, cashflow projections, financial results, and restructuring plans and negotiations that were known <u>only to those parties</u>. In addition, although the Mobilicity Group has asserted that it has fully canvassed available alternatives for such financing, based upon the information known to Catalyst and described herein such efforts were incomplete and untimely, at best.

38. Accordingly, Catalyst has written to the Monitor with a proposal to conduct a fair and open and expeditious process to solicit DIP financing for the Mobilicity Group on terms which

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[10] Now shown to me and marked as **Exhibit "V"** are copies of reports confirming the Government policy against sales of 2008 Spectrum to incumbents like Telus.

are superior to the DIP financing approved on September 30, 2013. Now shown to me and marked as **Exhibit "W"** is a true copy of the letter written to the Monitor regarding this proposal.

39. Finally, Catalyst is very concerned - having regard to the material conflicts of interest and the history and events described above and in the affidavit materials filed in the earlier legal proceedings referred to herein – that it has been excluded from the processes required to effect a beneficial sale of Opco, that the parties who have controlled that process have acted in a manner designed to advance their own interests at the Holdco level, at the expense of the legal rights and interests of the stakeholders at the Opco level, and that there is a need for a fair mechanism to enable all stakeholders to be involved in the process required to implement a beneficial sale of Opco's business. Consequently, in the letter referred to above, Catalyst has also requested the Monitor to consider and discuss appropriate terms for the creation of a Creditors Committee to alleviate these concerns.

40. Finally, aside from certain provisions of the Initial CCAA Order that are at variance with the model CCAA Order and which may require a clarification, Catalyst has the following additional substantive concerns: (i) paragraph 49 of the Initial CCAA Order could be read as sanctioning and approving the terms of the February Financing, including the $8.25 MM bridge fee, whose validity was an issue in the oppression proceedings, as well as the extraordinary control and veto provisions in favour of the Conflicted First Lien Holders referred to in footnote 3 above; and (ii) the DIP loan agreement also contains provisions which could be read as sanctioning the February Financing and which appear to perpetuate the control provisions referred to above; (iii) the DIP loan agreement also is subject to several open ended discretionary

conditions in favour of the DIP lenders which may well eliminate any DIP funding obligations, prior to the first advance provided for in the cashflows which have been filed by the applicants.

41. 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 9th day of October, 2013.	))))	
Commissioner for Taking Affidavits (or as may be)	))))	**James Riley**

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

AFFIDAVIT OF JAMES RILEY
(sworn October 9, 2013)

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

ONTARIO
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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

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Applicants

BRIEF OF EXHIBITS TO THE
AFFIDAVIT OF JAMES RILEY
MARKED PURSUANT TO RULE 4.06(3)(b) OF THE *RULES OF CIVIL PROCEDURE*
(Sworn October 9, 2013)
(Motion Returnable October 17, 2013)
VOLUME 1

October 9, 2013

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TO: ATTACHED SERVICE LIST

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

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

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BRIEF OF EXHIBITS TO THE
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(Sworn October 9, 2013)

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"H"	Order of His Honour Judge Wilton-Seigel with respect to the CBCA proceedings dated April 25, 2013	12(e)	9	316
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"I"	Reasons for Decision of His Honour Judge Wilton-Seigel with respect to the CBCA proceedings dated May 1, 2013	12(e)	9	350
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"K"	Order of His Honour Judge Campbell dated May 28, 2013	15	12	393
"L"	June 4, 2013 Press Release issued by Industry Canada re Telus Transaction	16	13	446
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"W"	Letter from Catalyst to the Monitor regarding a proposal for substitute DIP financing for the Mobilicity Group, dated September 30, 2013 (without enclosure)	38	22	585

A

This is Exhibit "A"
referred to in the affidavit of
JAMES RILEY
Sworn before me,
this 9th day of October, 2013

Paul Moore

A Commissioner, etc.

DATA AND AUDIO-VISUAL ENTERPRISES WIRELESS INC.

AND THE GUARANTORS PARTY HERETO

9.5% FIRST LIEN SENIOR SECURED NOTES DUE APRIL 29, 2018

INDENTURE

Dated as of April 29, 2011

EQUITY FINANCIAL TRUST COMPANY

Trustee and Collateral Agent

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EXHIBITS

INDENTURE dated as of April 29, 2011 among Data and Audio-Visual Enterprises Wireless Inc. (the *"Company"*), a corporation organized under the laws of the Province of Ontario, Canada, the Guarantors (as defined below) and Equity Financial Trust Company, as trustee under the Loan and Trust Companies Act and collateral agent for the Notes (as defined below).

WHEREAS the Company deems it necessary for its corporate purposes to create and issue the Notes (as defined herein) to be created and issued in the manner hereinafter appearing;

AND WHEREAS the Company is duly authorized to create and issue the Notes to be issued as herein provided;

AND WHEREAS, when certified by the Trustee and issued as provided in this Indenture, all necessary steps in relation to the Company have been duly enacted, passed and/or confirmed and other proceedings taken and conditions complied with to make the creation and issue of the Notes proposed to be issued hereunder legal, valid and binding on the Company in accordance with the Laws relating to the Company;

now therefore, for good and valuable consideration, the sufficiency of which is acknowledged, the Company and the Guarantors agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined below) of the 9.5% First Lien Senior Secured Notes due April 29, 2018 (the *"Notes"*):

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions.*

"Acquired Debt" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Additional Notes" means additional Notes (other than the Initial Notes) issued under this Indenture, as part of the same series as the Initial Notes.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided* that beneficial ownership of 10% or more of the Voting Stock of a Person will be deemed to be control. For purposes of this definition, the terms *"controlling,"* *"controlled by"* and *"under common control with"* have correlative meanings.

"Applicable Law" means applicable (i) laws, constitutions, treaties, statutes, codes, ordinances, statutory rules, principles of common and civil law and equity, terms and conditions of any grant of approval, permission, orders, decrees, rules, regulations and municipal by-laws, whether domestic,

foreign or international; (ii) judicial, arbitral, administrative, ministerial, departmental and regulatory judgments, orders, writs, injunctions, decisions, rulings, authority, licence, decrees and awards of any Governmental Entity; and (iii) policies, practices and guidelines of any Governmental Entity, which, although not actually having the force of law, are considered by such Governmental Entity as requiring compliance as if having the force of law, in each case binding on or affecting the Person, or the assets of the Person, referred to in the context in which such word is used, and the term "applicable" with respect to such laws and in the context that refers to one or more Persons, means that such Laws apply to such Person or Persons or its or their business, undertaking, property or securities and emanate from a Governmental Entity having jurisdiction over the Person or Persons or its or their business, undertaking, property or securities, in each case as such laws may be amended from time to time.

"*Applicable Premium*" means, with respect to any Note on any applicable redemption date, the excess of: (A) the present value at such redemption date of all remaining principal and interest payments due on such note (excluding accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Government of Canada Yield as of such redemption date plus 75 basis points; over (B) the principal amount of such Note.

"*Asset Sale*" means:

(1) the sale, lease, conveyance or other disposition of any assets or rights; *provided* that the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by the provisions of Section 4.15 hereof and/or Section 5.01 hereof and not by the provisions of Section 4.10 hereof; and

(2) the issuance or sale of Equity Interests in any of the Company or its Restricted Subsidiaries (other than Holdings).

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than $10 million;

(2) a transfer of assets between or among the Company and its Restricted Subsidiaries (including any Persons that become a Restricted Subsidiary in connection with such transaction);

(3) an issuance of Equity Interests by a Restricted Subsidiary of the Company to the Company or to a Restricted Subsidiary of the Company;

(4) the sale or lease of inventory, equipment, products, services or accounts receivable in the ordinary course of business and any sale or other disposition of damaged, worn-out or obsolete assets in the ordinary course of business;

(5) the sale or maturity or other disposition of cash or Cash Equivalents;

(6) a Restricted Payment that does not violate the provisions of Section 4.07 hereof;

(7) a Permitted Investment;

(8) any sale or disposition deemed to occur in connection with creating, granting or enforcing any Permitted Lien; and

(9) any Asset Swap

"*Asset Sale Offer*" has the meaning set forth in Section 3.09.

"*Asset Swap*" means a concurrent purchase and sale or exchange of Related Business Assets between the Company or any of its Restricted Subsidiaries and another Person; provided that any cash received must be applied in accordance Section 4.10.

"*Attributable Debt*" in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided, however*, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"*Bankruptcy Law*" means the Bankruptcy and Insolvency Act (Canada), the Companies' Creditors Arrangement Act (Canada), or Title 11, U.S. Code, each as amended, or any similar bankruptcy or insolvency law, and other laws concerning formal or informal moratoria of debt or compositions with creditors, and proceedings seeking reorganization, arrangement, or other relief of debtors.

"*Beneficial Owner*" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"*Board of Directors*" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"*Business Day*" means any day other than a Legal Holiday.

"*Capital Lease Obligation*" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

"Cash Equivalents" means, as at any date of determination:

(1) United States dollars;

(2) Canadian dollars;

(3) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States or Canada and maturing within one year of the date of acquisition thereof or (b) issued by any agency of the United States or Canada the obligations of which are backed by the full faith and credit of the United States or Canada, in each case maturing within one year after the date of acquisition thereof;

(4) marketable direct obligations issued by any province of Canada or any political subdivision of any such province or any public instrumentality thereof, in each case maturing within one year after the date of acquisition thereof and having a rating of at least A-2 from S&P or at least P-2 from Moody's;

(5) commercial paper maturing no more than one year from the date of acquisition thereof and having a rating of at least A-2 from S&P, at least P-2 from Moody's or at least R-2 (high) from Dominion Bond Rating Services Limited;

(6) financial instruments maturing within one year after the date of acquisition thereof and issued by any Canadian chartered bank which has a long-term debt rating of at least A+ by S&P, A2 by Moody's or A (high) by Dominion Bond Rating Services Limited;

(7) repurchase agreements with a term of not more than 30 days for underlying securities of the types described in clause (1) or (2) entered into with any bank meeting the qualifications specified in clause (4) or (5), which repurchase obligations are secured by a perfected first priority security interest in the underlying securities; and

(8) shares of any money market mutual fund that has at least 95% all of its assets invested continuously in the types of investments referred to in clauses (1) and (5) above.

"CDS" means CDS Clearing and Depository Services Inc.

"Change of Control" occurs where (i) any Person or group of Persons (acting in concert), other than DAVE Investments and Quadrangle, beneficially owns, directly or indirectly, more than 50% of the equity or assets of Holdings or the Company, and (ii) within 180 days of the occurrence of the event set forth in clause (i), a Diminution in Collateral Value has occurred.

"Change of Control Offer" has the meaning set forth in Section 4.15(a).

"Collateral" means all of the present and future property of the Company and the Guarantors, including but not limited to accounts, chattel paper, documents, equipment, general intangibles, intellectual property, instruments, inventory, property, letter of credit rights, goods, real property, pledges of the Guarantors' equity and all of their rights to the Spectrum Licenses.

"Collateral Agent" means Equity Financial Trust Company in its capacity as collateral agent for the Notes until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder in such capacity;

"Collateral Documents" means the security agreements, mortgages, and other instruments pursuant to which the Company and the Guarantors shall grant first-priority Liens in the Collateral to the Collateral Agent. The Liens shall be in favour of the Collateral Agent, who shall hold such Liens for the benefit of the Trustee and the Holders of Notes from time to time.

"Company" means Data and Audio-Visual Enterprises Wireless Inc., a corporation organized under the laws of the Province of Ontario, Canada and any and all successors thereto.

"Consolidated EBITDA" means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period *plus*, without duplication:

(1) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; *plus*

(2) the Consolidated Interest Expense of such Person and its Restricted Subsidiaries for such period, to the extent that such Consolidated Interest Expenses were deducted in computing such Consolidated Net Income; *plus*

(3) depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; *plus*

(4) non-cash compensation expense arising from any grant of stock, stock options or other equity-based awards of such Person, in each case to the extent that such non-cash compensation expense was deducted in computing such Consolidated Net Income; *minus*

(5) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business,

in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, and the depreciation and amortization and other non-cash expenses of, a Restricted Subsidiary of the Company shall be added to Consolidated Net Income to compute Consolidated EBITDA of the Company or Holdings only to the extent that a corresponding amount would be permitted at the date of determination to be dividended to the Company or Holdings by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

"*Consolidated Indebtedness*" means, at any date of determination, with respect to any Person as of any date of determination, the sum, without duplication, of (i) the total amount of Indebtedness of such Person and its Restricted Subsidiaries, plus (ii) the total amount of Indebtedness of any other Person, to the extent that such Indebtedness has been Guaranteed by the referent Person or one or more of its Restricted Subsidiaries, plus (iii) the aggregate liquidation value of all Disqualified Stock of such Person, in each case, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Interest Expense*" means, with respect to any Person for any period, the sum without duplication of (i) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net payments (if any) pursuant to Hedging Obligations); and (ii) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; and (iii) any interest expense on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries (whether or not such Guarantee or Lien is called upon); and (iv) the product of (a) all dividends, whether paid or accrued, on any series of preferred stock of such Person or any of its Subsidiaries, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, provincial, state and local or other statutory Canadian or United States tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

"*Consolidated Net Income*" means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

(1) the Net Income (but not loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;

(2) the Net Income of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, members, managers or partners, as applicable;

(3) the cumulative effect of a change in accounting principles will be excluded; and

(4) notwithstanding clause (1) above, the Net Income of any Unrestricted Subsidiary will be excluded, whether or not distributed to the specified Person or one of its Subsidiaries.

"Convertible Debentures" means Holdings' approximately $59.7 million aggregate principal amount of convertible debentures outstanding on the Issue Date.

"Corporate Trust Office of the Trustee" will be at the address of the Trustee specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Company from time to time.

"DAVE Investments" means Data & Audio-Visual Enterprises Investments Inc. and any of its Affiliates (other than Holdings, the Company and DAVE Leasing).

"DAVE Leasing" means Data & Audio-Visual Enterprises Leasing Inc.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Diminution in Collateral Value" means, as of any date of determination, the ratio of the book value of the Spectrum Licenses and Holdings' property, plant and equipment (as defined by GAAP), each after any applicable acquisition accounting adjustments, to First Priority Indebtedness is below 125%.

"Depository" means CDS or such other Person as is designated by the Company to act as a depository in respect of the Global Notes.

"Disqualified Stock" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Company or any of its Restricted Subsidiaries to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company or its Restricted Subsidiaries may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.07 hereof. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"Environmental Law" means all federal, provincial, state, municipal, country, local and other laws, statutes, codes, ordinances, by-laws, rules, regulations, policies, guidelines, certificates, approvals, permits, consents, directions, standards, judgments, orders and other authorizations, as well as common law, civil and other jurisprudence or authority, in each case domestic or foreign, having the force of law at any time relating in whole or in part to any Environmental Matters and any permit, order, directions, certificate, approval, consent, registration, licence or other authorization of any kind relating to Environmental Matters.

"*Environmental Matters*" means (a) a condition or substance, heat, energy, sound, vibration, radiation or odour that may affect any component of the earth and its surrounding atmosphere or affect human health or any plant, animal or other living organism; and (b) any waste, toxic substance, contaminant or dangerous good or the deposit, release or discharge of any thereof into any component of the earth and its surrounding atmosphere.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means any public or private sale either:

(1) of Equity Interests of Holdings other than Disqualified Stock (other than to a Subsidiary of Holdings or relating to equity securities issuable under any employee benefit or stock option plan of Holdings), or

(2) of Equity Interests of a direct or indirect parent entity of Holdings, (other than to Holdings or a Subsidiary of Holdings) to the extent that the net proceeds therefrom are contributed to the common equity capital of Holdings,

in each case, to any Person other than an Affiliate of Holdings.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended.

"*Existing Indebtedness*" means Indebtedness of Holdings and its Subsidiaries in existence on the date of this Indenture, until such amounts are repaid.

"*Fair Market Value*" means the value that would be paid by an informed and willing buyer under no compulsion to buy to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors of the Company (unless otherwise provided in this Indenture).

"*First Priority Indebtedness*" means Indebtedness of the Company or any Restricted Subsidiary which is secured by a first priority Lien.

"*GAAP*" means International Financial Reporting Standards as in effect as of the date of this Indenture.

"*Global Note*" means a book-entry-only Note representing Notes issued on the Issue Date or on any subsequent date that is registered in the name of the Depository.

"*Governmental Authority*" means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government, including any supra-national body such as the European Union or the European Central Bank, and includes a Minister of the Crown, Superintendent of Financial Institutions, or other comparable authority or agency.

"*Government of Canada Yield*" means, at any redemption date, the average yield to maturity implied by the yields reported as of 10:00 a.m. (Toronto time) on the third Business Day preceding the redemption date, as provided by three major Canadian investment dealers designated by the Company, for actively traded, non-callable Government of Canada securities having a maturity most nearly equal to the period from the redemption date to the third anniversary of the Issue Date, in accordance with customary financial practice in pricing new issues of corporate debt securities of comparable maturity to the period from the redemption date to the third anniversary of the Issue Date.

"Government Securities" means direct obligations of, or obligations guaranteed by, the Government of Canada (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the Government of Canada is pledged and which are not callable or redeemable at the issuer's option.

"Guarantee" means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"Guarantors" means Data and Audio-Visual Enterprises Holdings Inc., Data & Audio-Visual Enterprises Leasing Inc. and all of Data and Audio-Visual Enterprises Wireless Inc.'s future Restricted Subsidiaries, their respective successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

"Hedging Obligations" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates.

"Holder" means a Person in whose name a Note is registered.

"Holdings" means Data and Audio-Visual Enterprises Holdings Inc.

"Immaterial Subsidiary" means, as of any date, any Restricted Subsidiary whose total assets, as of that date, are less than $400,000 and whose total revenues for the most recent 12-month period for which financial statements are available do not exceed $400,000; *provided* that all Restricted Subsidiaries designated as Immaterial Subsidiaries may not in the aggregate have at the end of any fiscal quarter (x) total assets in excess of $4,000,000 or (y) total revenues in the prior 12-month period in excess of $4,000,000, in each case determined based upon the internal financial statements for the relevant fiscal quarter(s); *provided* further that a Restricted Subsidiary will not be considered to be an Immaterial Subsidiary if it, directly or indirectly, guarantees or otherwise provides direct credit support for any Indebtedness of the Company. Upon any Restricted Subsidiary ceasing to comply with the foregoing requirements, Holdings and such Restricted Subsidiary will, to the extent necessary, comply with the provisions set forth under Section 4.18 of this Indenture.

"Indebtedness" means, with respect to any Person, (without duplication):

(a) all indebtedness under or in respect of any bill, bond, debenture, note or similar instrument;

(b) all indebtedness under or in respect of any acceptance, endorsement or discounting arrangement (other than endorsing cheques in the ordinary course of business);

(c) all indebtedness under or in respect of any deferred purchase price of any asset or service due more than 180 days after such property is acquired or such services are completed. For greater clarity, indebtedness under this clause shall not include liabilities that result from the accounting treatment of long-term contracts (more than 365 days), where the payment dates and amounts are fixed throughout the term of such contracts, and such payments do not become due or payable until the services for the corresponding time period have been performed;

(d) all obligations of another Person secured by a Lien on any properties or assets of such Person, to the extent of the value of such property where such Person has not assumed or otherwise become liable for the payment of such obligations;

(e) all Capital Lease Obligations and Attributable Debt of such Person;

(f) reimbursement obligations in respect of any letters of credit other than any reimbursement obligations provided for in the purchase or other documentation relating to purchased assets or services;

(g) the net amount of all Hedging Obligations of such Person (determined on marked-to-market basis); and

(h) all Guarantees of the Indebtedness of others by such Person.

"Indenture" means this Indenture, as amended or supplemented from time to time.

"Initial Notes" means the first $195,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"Investments" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers, directors and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Company, the Company will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Company's Investments in such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of Section 4.07 hereof. The acquisition by the Company or any Restricted Subsidiary of the Company of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Company or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in the final paragraph of Section 4.07 hereof. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

"*IPO*" means (i) the first registration or qualification of equity or equity-like securities of Holdings or any of its Subsidiaries under a prospectus, for which a final receipt has been granted by the applicable securities regulatory authority, (ii) any transaction or series of transactions, involving an acquisition by Holdings (or any of its Subsidiaries) or of Holdings (or any of its Subsidiaries), and an equity or equity-like security issuance by Holdings or such Subsidiary, that results in Holdings or such Subsidiary becoming a reporting issuer (as such term is defined in applicable securities legislation) in Canada, or the equivalent in a foreign jurisdiction.

"*Issue Date*" means the date on which the Notes are originally issued under this Indenture being the date hereof.

"*Lease*" means a lease agreement relating to any Real Property to which any of the Company or any Guarantor is a party, as lessee, and which entitles such Person to the use of such Real Property for the purpose of operating its business.

"*Lease/License Certificate*" means a certificate substantially in the form set out in Exhibit D.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions in the City of Toronto are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday, payment may be made on the next succeeding day that is not a Legal Holiday.

"*Licence*" means a licence agreement relating to any Real Property to which the Company or any Guarantor is a party, as licencee and which entitles such Person to use such Real Property for the purpose of operating its business.

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the *Personal Property Security Act* (Ontario), the Uniform Commercial Code (or any equivalent statutes) of any jurisdiction.

"*Material Adverse Effect*" means a material adverse effect on:

(a) the business, condition (financial or otherwise), operations, performance, property or assets of the Company, Holdings or Dave Leasing;

(b) the ability of the Company, Holdings or Dave Leasing to perform (i) any of its payment obligations, and/or (ii) any of its other material obligations under any of the Collateral Documents; and

(c) the validity or enforceability of, or the effectiveness or ranking of any Lien granted or purporting to be granted pursuant to, any of the Collateral Documents or the rights or remedies of any party under any of the Collateral Documents.

"*Moody's*" means Moody's Investors Service, Inc.

"*Net Income*" means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

(1) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with:

(a) any Asset Sale; or

(b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

(2) any extraordinary gain or loss, together with any related provision for taxes on such extraordinary gain or loss.

"Net Proceeds" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale but only when received), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation or severance expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and amounts required to be applied to the repayment of Indebtedness secured by a Lien on the asset or assets that were the subject of such Asset Sale or other transaction and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP.

"New Convertible Debentures" means convertible debentures issued pursuant to the Quadrangle Facility after the Issue Date that are Subordinated Indebtedness and includes any such convertible debentures which have been issued in payment of accrued interest under any such outstanding convertible debentures.

"Non-Recourse Debt" means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable as a guarantor or otherwise, or (c) constitutes the lender;

(2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(3) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Company or any of its Restricted Subsidiaries.

"Note Guarantee" means the Guarantee by each Guarantor of the Company's obligations under this Indenture and the Notes, executed pursuant to the provisions of this Indenture.

"Notes" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes and any Additional Notes.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Officer" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"Officers' Certificate" means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Company, that meets the requirements of Section 12.04 hereof.

"Opinion of Counsel" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 12.04 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"*OSC*" means the Ontario Securities Commission.

"Participant"" means a Person that has an account with a Depository and uses the book-entry-only services of the Depository on its own behalf or on behalf of beneficial owners of securities who are the clients or customers of that Person.

"Permitted Business" means any business conducted by the Company or any Restricted Subsidiary on the date of this Indenture and any businesses that, in the good faith judgment of the Board of Directors of the Company, are similar, reasonably related, ancillary or complementary thereto, or reasonable extensions or expansions thereof, including in connection with the Company existing and future technology, trademarks, patents or licenses.

"Permitted Investments" means:

(1) any Investment in the Company or in a Restricted Subsidiary of the Company;

(2) any Investment in Cash Equivalents;

(3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Company; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with Section 4.10;

(5) any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company or any of its Restricted Subsidiaries;

(6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;

(7) Investments represented by Hedging Obligations permitted by this Indenture;

(8) repurchases of the Notes;

(9) Investments in existence on the date of this Indenture; and

(10) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (10) that are at the time outstanding not to exceed $2.5 million.

"*Permitted Liens*" means:

(1) Liens in favor of the Company or the Guarantors;

(2) Liens on property, or on shares of Stock or Indebtedness, of a Person existing at the time such Person is merged with or into, amalgamated with, or consolidated with Holdings or any Subsidiary of Holdings; *provided* that such Liens were in existence prior to the contemplation of such merger, amalgamation or consolidation and do not extend to any assets other than those of the Person merged into, amalgamated with, or consolidated with Holdings or the Subsidiary;

(3) Liens on property (including Capital Stock) existing at the time of acquisition of the property by Holdings or any Subsidiary of Holdings; *provided* that such Liens were in existence prior to, and not incurred in contemplation of, such acquisition;

(4) Liens to secure the performance of bids, tenders, leases, statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business;

(5) Liens to secure Indebtedness (including Capital Lease Obligations) permitted by Section 4.09(b)(3);

(6) Liens existing on the date of this Indenture;

(7) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(8) Liens imposed by law, such as carriers', warehousemen's, landlord's and mechanics' Liens, in each case, incurred in the ordinary course of business;

(9) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or

zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(10) Liens created for the benefit of (or to secure) the Notes or the Note Guarantees;

(11) Liens to secure any Permitted Refinancing Indebtedness permitted to be incurred under this Indenture; *provided, however*, that:

(a) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof);

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge;

(12) Liens to secure Indebtedness (including Hedging Obligations) permitted by Section 4.09(b)(6);

(13) Liens to secure First Priority Indebtedness permitted by Section 4.09(b)(11); and

(14) Liens incurred in the ordinary course of business of Holdings or any Subsidiary of Holdings with respect to obligations that do not exceed $5.0 million at any one time outstanding.

"*Permitted Refinancing Indebtedness*" means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, renew, refund, refinance, replace, defease or discharge other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); *provided* that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness extended, renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged;

(3) if the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to, the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged; and

(4) such Indebtedness is incurred either by the Company or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, renewed, refunded, refinanced, replaced, defeased or discharged.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Quadrangle" means QCP CW S.A.R.L and any of its Affiliates.

"Quadrangle Facility" means the Commitment Agreement dated September 25, 2009, among Holdings, Quadrangle and DAVE Investments, as amended.

"Real Property" means:

(a) any freehold, leasehold or immovable property; and

(b) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that freehold, leasehold or immovable property.

"Register" means a register kept by the Trustee at such place as the Trustee may designate in which shall be entered the names and latest known addresses of Holders and the other particulars, as prescribed by law, of the Notes held by each of them and of all transfers of such Notes.

"Refinance" means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, replace, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. "Refinanced" and "Refinancing" shall have correlative meanings.

"Related Business Assets" means assets used or useful in a Permitted Business.

"Relevant Taxing Jurisdiction" has the meaning set forth in Section 4.20.

"Responsible Officer," when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Restricted Investment" means an Investment other than a Permitted Investment.

"Restricted Subsidiary" of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary, provided, that Holdings shall be a Restricted Subsidiary of the Company.

"S&P" means Standard & Poor's Ratings Group.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Significant Subsidiary" means any Subsidiary that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date of this Indenture.

"Spectrum Licenses" means each of the AWS spectrum licenses issued, under the authority of the Minister of Industry Canada in accordance with the *Radiocommunication Act* (Canada) and the Radiocommunications Regulations, to the Company by Industry Canada on February 11, 2009, and for purposes of the definition of Diminution in Collateral Value, includes any AWS spectrum licenses issued to the Company or any Restricted Subsidiary after the date of this Indenture.

"Stated Maturity" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"Subordinated Convertible Debentures" means Subordinated Indebtedness that has (a) a final maturity later than March 24, 2019, and (b) a Weighted Average Life to Maturity greater than the Weighted Average Life to Maturity of the Subordinated Debentures; provided that Subordinated Convertible Debentures may only be issued subsequent to an IPO.

"Subordinated Debentures" means the senior unsecured debentures issued pursuant to the Trust Indenture dated December 17, 2009 between Holdings and Equity Transfer & Trust Company as amended and restated on the Issue Date.

"Subordinated Indebtedness" means Indebtedness of Holdings that is expressly subordinated to the Subordinated Debentures and is not guaranteed by the Company or any of its subsidiaries.

"Subsidiary" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders' agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"Total Incremental Equity" means 100% of the aggregate (i) net cash proceeds received by the Company and its Restricted Subsidiaries since the date of this Indenture as a contribution to its common equity capital or from the issue or sale of Equity Interests (other than Disqualified Stock) of the Company and its Restricted Subsidiaries or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities or other debt obligations of the Company and its Restricted Subsidiaries that have been converted into or exchanged for such Equity Interests (other than Disqualified Stock) (other than Equity Interests (other than Disqualified Stock) (or Disqualified Stock or debt securities) sold to a Subsidiary of Holdings) or (ii) the Fair Market Value of the consideration (if other than cash) from the issue or sale of Equity Interests (other than Disqualified Stock) of the Company and its Restricted Subsidiaries, in each case excluding Equity Interests sold to, or indebtedness held by, a Subsidiary of Holdings.

"Trustee" means Equity Financial Trust Company in its capacity as trustee and collateral agent for the Notes until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder in such capacity.

"Unrestricted Subsidiary" means any Subsidiary of the Company that is designated by the Board of Directors of the Company as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) except as permitted by Section 4.11 hereof, is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;

(3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results;

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries; and

(5) individually and together with all other Unrestricted Subsidiaries, has assets that comprise less than 10% of the total assets of Holdings (on a consolidated basis) on such date, and, individually and together with all other Unrestricted Subsidiaries, generates less than 10% of the Consolidated EBITDA of Holdings for the four most recently completed fiscal quarters.

"Voting Stock" of any specified Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; *by*

(2) the then outstanding principal amount of such Indebtedness.

Section 1.02 *Rules of Construction.*

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time. .

ARTICLE 2
THE NOTES

Section 2.01 *Form and Dating.*

There is hereby established the Notes to be issued under this Indenture, which are designated as the Company's "9.5% First Lien Senior Secured Notes due April 29, 2018". The aggregate principal amount of Notes authorized to be issued under this Indenture is unlimited and may be issued in one or more series, but Notes may only be issued upon and subject to the conditions and limitations herein set forth.

The Notes and the Trustee's certificate of certification will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note will be dated the date of its certification. The Notes shall be in minimum denominations of $2,000 and integral multiples of $1,000.

The Company will pay interest on the principal amount of the Notes at 9.5% per annum from the date of this Indenture until maturity which is April 29, 2018. The Company will pay interest semi-annually in arrears on March 31 and September 30 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*"). The first Interest Payment Date shall be September 30, 2011. The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Interest will be computed on the basis of a 365-day year. In the case of any interest period that is shorter than a full semi-annual interest period, interest will be calculated on the basis of a 365-day year and the actual number of days elapsed in that period.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Section 2.02 *Execution and Certification.*

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is certificated, the Note will nevertheless be valid.

A Note will not be valid until certified by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been certified under this Indenture. The certification of the Trustee on the Notes issued hereunder shall not be construed as a representation or warranty by the Trustee as to the validity of the Indenture or the Notes (except the due certification thereof) and the Trustee shall in no respect be liable or answerable for the use made of the Notes or any of them or of the consideration therefor except as otherwise specified herein.

The Trustee will, upon receipt of a written order of the Company signed by at least one Officer (a "*Certification Order*"), certify Notes for original issue that may be validly issued under this Indenture, including any Additional Notes. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Certification Orders.

The Trustee may appoint an certification agent acceptable to the Company to certify Notes. A certification agent may certify Notes whenever the Trustee may do so. Each reference in this Indenture to certification by the Trustee includes certification by such agent.

Section 2.03 *Book-Entry-Only Securities*

The Notes issued on the date of this Indenture and any Additional Notes shall be issued as book-entry-only securities and shall be represented by one or more Global Notes registered in the name of the appropriate Depository. Participants and holders of beneficial interests in a Global Note shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository or under such Global Note, and as the registered Holder of the Global Note the Depository shall be considered to be the sole owner and Holder of the Notes represented by the Global Note for all purposes under this Indenture and the Notes. Principal of and premium, if any, and interest on the Notes shall be payable by the Company solely to the Depository. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee, or any agent of the Company or the Trustee from giving effect to any written certification, proxy, or other authorization furnished by the Depository or impair, as between the Depository and its Participants or holders of beneficial interests in any Global Note, the operation of customary practices of the Depository governing the exercise of the rights of holders of beneficial interests in any Global Note.

Section 2.04 *Register*

The Trustee shall maintain a Register recording the names and addresses of the Holders and particulars of the Notes held by such Holders and an office or agency where Notes may be presented for payment ("Paying Agent"). At its election, the Company may act as Paying Agent.

Section 2.05 *Limited Registration Rights.*

No Notes or other instruments evidencing ownership of Notes shall be issued other than to the Depository unless

(a) the issuance of such Notes or instruments is required by Applicable Law;

(b) the book-entry-only system is no longer available to the Company;

(c) the Depository advises the Trustee that it is no longer willing or able to discharge properly its responsibilities as depository with respect to the Notes, and the Company cannot locate or elects not to appoint a qualified successor;

(d) the Depository ceases to be a recognized clearing agency under Applicable Law or otherwise ceases to be eligible to be a depository and a successor depository is not appointed;

(e) the Company, at its option, decides to no longer utilize the book-entry-only system; or

(f) after the occurrence of an Event of Default, the Depository advises the Trustee that it has received written notification from Participants, acting on behalf of beneficial owners representing in the aggregate more than 50% of the aggregate principal amount of the Notes then outstanding, that the continuance of the book-entry-only system is no longer in the best interests of such beneficial owners.

In each of such events, each Global Note shall be cancelled by the Trustee or an agent of the Company or the Trustee and owners of beneficial interests in the Notes shall become entitled to receive Notes in fully registered form in denominations of $2,000 and integral multiples of $1,000, certified by the Trustee upon written direction from the Company and including such legends and other notations as may be required to comply with the laws applicable to the Company and such owners at such time.

Section 2.06 *Global Note Legends*

(a) Every Note in which a beneficial interest is sold to a purchaser in Canada shall bear a legend in substantially the following form or in such other form, if any, as may be required by Applicable Law at the time such Note is certified by the Trustee:

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) APRIL 29, 2011, AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

(b) Every Note in which a beneficial interest is sold to a purchaser in the United States of America shall bear a legend in substantially the following form or in such other form, if any, as may be required by Applicable Law at the time such Note is certified by the Trustee:

"THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAW AND MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE ISSUER, (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE ACT, (C) WITHIN THE UNITED STATES IN COMPLIANCE WITH (I) RULE 144 UNDER THE ACT, OR (II) RULE 144A UNDER THE ACT, AND IN EACH CASE IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, OR (D) IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE ACT OR ANY APPLICABLE STATE SECURITIES LAWS, AND THE HOLDER HAS, PRIOR TO SUCH SALE, FURNISHED TO THE ISSUER AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER.

DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. AT ANY TIME THAT THE ISSUER IS A "FOREIGN ISSUER" (AS DEFINED IN RULE 902 UNDER

THE ACT), A NEW CERTIFICATE, BEARING NO LEGEND, THE DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY" MAY BE OBTAINED FROM THE TRUSTEE UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO THE TRUSTEE, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE ACT AND, IF REQUESTED BY THE ISSUER OR THE TRUSTEE, AN OPINION OF COUNSEL OF RECOGNIZED STANDING, EACH IN A FORM SATISFACTORY TO THE TRUSTEE AND THE ISSUER, TO THE EFFECT THAT SUCH SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE ACT."

Section 2.07 *Ownership and Entitlement to Payment*

The Person in whose name a Note, including a Global Note, is registered shall be deemed to be the beneficial owner thereof for all purposes of this Indenture and payment of or on account of the principal of and premium, if any, and interest on such Note shall be made only to or upon the order in writing of such Person, and each such payment shall be a good and sufficient discharge to the Company and the Trustee for the amount so paid.

Notwithstanding any other provision of this Indenture, all payments in respect of Notes represented by a Global Note shall be made to the Depository for subsequent payment by the Depository to those Participants that the records of the Depository indicate have clients or customers that have beneficial ownership interests in such Global Note.

The Trustee shall maintain accounts and records evidencing each payment of principal of and premium and interest on the Notes, which accounts and records shall constitute, in the absence of manifest error, prima facie evidence thereof.

Neither the Company nor the Trustee shall have any responsibility or liability for maintaining, supervising, or reviewing records of the Depository or its Participants relating to payments made or to be made by the Depository or by any of its Participants on account of beneficial ownership interests in the Notes or for maintaining, reviewing, or supervising any records relating to such beneficial ownership interests. Participants must look solely to the Depository, and Persons other than Participants having an interest in the Notes must look solely to Participants, for payments made by or on behalf of the Company to the Depository in respect of the Notes.

Section 2.08 *Restrictions on Transfer of Global Notes*

Notwithstanding any other provision of this Indenture, a Global Note registered in the name of a Depository may not be transferred by the Depository except in the following circumstances:

(a) such Global Note may be transferred by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or to another nominee of the Depository or by the Depository or a nominee of the Depository to a successor depository or its nominee;

(b) such Global Note may be transferred at any time after the Depository has notified the Company that it is unwilling or unable or no longer eligible to continue as depository for such Global Note;

(c) such Global Note may be transferred at any time after the Company has determined, in its sole discretion, that the Notes represented by such Global Note shall no longer be held as book-entry-only securities; and

(d) such Global Note may be transferred at any time after the Trustee has determined that an Event of Default has occurred and is continuing with respect to the Notes issued in the form of such Global Note, provided that at the time of such transfer such Event of Default has not been waived in accordance with the provisions of this Indenture.

In each such case, Notes in fully registered form shall be issued in accordance with Section 2.05.

Section 2.09 *Transfers of Beneficial Interests in Global Note.*

The transfer of beneficial interests in a Global Note shall be effected through the Depository in accordance with the provisions of this Indenture and the rules and procedures of the Depository that apply to such transfer. Beneficial interests in a Global Note shall be subject to restrictions on transfer to the extent required by Applicable Law and may be transferred in accordance with the transfer restrictions set forth in any applicable legends on the Global Note. No written orders or instructions shall be required to be delivered to the Trustee to effect the transfers described in this Section 2.09.

Section 2.10 *Voting.*

In determining whether the Holders of the required principal amount of Notes have concurred in any amendment, supplement, direction, waiver or consent, Notes owned by the Company or any Guarantor, or by any Affiliate of the Company or any Guarantor will be disregarded and considered as though not outstanding.

Section 2.11 *Defaulted Interest.*

If the Company defaults in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company will fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) will mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

Section 2.12 *Interest Act.*

Each interest rate that is calculated on the Notes on any basis other than the actual number of days in a calendar year (the "**deemed interest period**") is solely for the purposes of the *Interest Act* (Canada) equivalent to a yearly rate calculated by dividing such interest rate by the number of days in the deemed interest period, then multiplying such result by the actual number of days in the calendar year.

ARTICLE 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time (including pursuant to a redemption, Change of Control Offer or Asset Sale Offer), the Trustee will select Notes for redemption or purchase on a *pro rata* basis unless otherwise required by law or applicable stock exchange requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption o purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 *Notice of Redemption.*

Subject to the provisions of Section 3.07 and 3.09 hereof, at least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 11 hereof.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new

Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided, however,* that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 *Effect of Notice of Redemption.*

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

Section 3.05 *Deposit of Redemption or Purchase Price.*

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part.*

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Certification Order, the Trustee will certify for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption.*

(a) At any time and from time to time prior to the third anniversary of the Issue Date, upon not less than 30 nor more than 60 days' prior written notice, the Company, at its option, may redeem the Notes, in whole or in part, at a redemption price equal to the sum of (i) 100% of the principal amount of the Notes to be redeemed, *plus* (ii) the greater of (x) the Applicable Premium as of the redemption date and (y) 1%, *plus* (iii) accrued and unpaid interest on such Notes to but not including the redemption date (subject to the right of holders of the notes on the relevant record date to receive interest due on an interest payment date falling on or prior to the redemption date).

(b) At any time and from time to time prior to th third anniversary of the Issue Date, upon not less than 30 nor more than 60 days' prior written notice, the Company, at its option, may redeem up to 35% of the aggregate principal amount of the Notes, in whole or in part, at a redemption price equal to 109.5% of the principal amount of the Notes to be redeemed *plus* accrued and unpaid interest on such Notes to but not including the redemption date (subject to the right of holders of the notes on the relevant record date to receive interest due on an interest payment date falling on or prior to the redemption date) with the net cash proceeds of an Equity Offering by Holdings; provided that; *provided* that:

(1) at least 65% of the aggregate principal amount of the Notes originally issued under this Indenture remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

(c) On or after the third anniversary of the Issue Date, the Company may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest on the Notes redeemed to the applicable redemption date, if redeemed during the twelve-month periods indicated below, subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date:

Year	Percentage
third to fourth anniversary of the Issue Date	104.75%
fourth to fifth anniversary of the Issue Date	103.17%
fifth to sixth anniversary of the Issue Date	102.375%
sixth anniversary of the Issue Date and thereafter	100%

(d) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof. Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

Section 3.08 *Mandatory Redemption.*

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 *Offer to Purchase by Application of Excess Proceeds.*

In the event that, pursuant to Section 4.10 hereof, the Company is required to commence an offer to all Holders to purchase Notes (an "*Asset Sale Offer*"), it will follow the procedures specified below.

The Asset Sale Offer shall be made to all Holders and all holders of other First Priority Indebtedness that is *pari passu* with the Notes containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets. No earlier than 20 days and no later than 60 days from the date notice of the Asset Sale Offer is mailed (the "*Purchase Date*"), the Company will apply all Excess Proceeds (the "*Offer Amount*") to the purchase of Notes and such other *pari passu* First Lien Indebtedness (on a *pro rata* basis, if applicable) or, if less than the Offer Amount has been tendered, all Notes and other First Lien Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer unless the Company defaults in making such payment.

Upon the commencement of an Asset Sale Offer, the Company will send, by first class mail, a notice to the Trustee and each of the Holders, with a copy to the Trustee. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The notice, which will govern the terms of the Asset Sale Offer, will state:

(1) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.10 hereof and the length of time the Asset Sale Offer will remain open;

(2) the Offer Amount, the purchase price and the Purchase Date;

(3) that any Note not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest after the Purchase Date;

(5) that Holders electing to have Notes purchased pursuant to any Asset Sale Offer will be required to surrender the Note, or transfer by book-entry transfer, to the Company or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(6) that Holders will be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, not later than the expiration of the Asset Sale Offer, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the

principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(7) that, if the aggregate principal amount of Notes and other *pari passu* First Lien Indebtedness surrendered by holders thereof exceeds the Offer Amount, the Company will select the Notes and other *pari passu* First Lien Indebtedness to be purchased on a *pro rata* basis based on the principal amount of Notes and such other *pari passu* First Lien Indebtedness surrendered; and

(8) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, the Company will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.09. The Company or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon written request from the Company, will certify and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Asset Sale Offer on the Purchase Date.

Other than as specifically provided in this Section 3.09, any purchase pursuant to this Section 3.09 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

The Company will comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 3.09, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this Section 3.09 by virtue of such compliance.

Section 3.10 *Redemption for Changes in Withholding Taxes.*

The Company may redeem all, but not less than all, of the Notes at any time, upon not less than 30 nor more than 60 days' notice, at 100% of the aggregate principal amount of the Notes, together with accrued and unpaid interest on the Notes redeemed to the redemption date, if the Company has become or would become obligated to pay, on the next date on which any amount would be payable with respect to the Notes, any Additional Amounts as a result of a change in the laws or treaties (including any regulations promulgated thereunder) of a Relevant Taxing Jurisdiction, or any change in any official position of any governmental agency, taxing authority or regulatory authority regarding the application or interpretation of such laws or regulations, which change is announced or becomes effective on or after the date of this Indenture (a "*Change in Law*").

ARTICLE 4
COVENANTS

Section 4.01 *Payment of Notes.*

The Company will pay or cause to be paid the principal of, premium, if any, and interest on, the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due. If the Trustee is the Paying Agent, the Company shall deliver such funds to the Trustee by 9:00 a.m. Eastern Time on such date.

Section 4.02 *Maintenance of Office or Agency.*

The Company will maintain in Toronto, an office or agency (which may be an office of the Trustee) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company.

Section 4.03 *Reports.*

Holdings and the Company will furnish the following disclosure documents to the Holders and the Trustee (which furnishing may be done by posting such information on its website (which may be a secured area of the website accessible only to Holders and qualified prospective investors in the Notes)):

(1) within 60 days after the end of each quarterly fiscal period in each fiscal year of Holdings (other than the last quarterly fiscal period of each such fiscal year) unaudited consolidated financial statements and a "Management's Discussion and Analysis of Financial Condition and Results of Operations" for such quarter;

(2) within 90 days after the end of each fiscal year of Holdings audited consolidated financial statements and a "Management's Discussion and Analysis of Financial Condition and Results of Operations" for such fiscal year; and

(3) within 10 days following an event that results in a Material Adverse Effect, a report with a description of such event.

In addition, within five days after delivery by Holdings and the Company of the documents set forth in clause (1) and (2) above, Holdings and the Company will hold an investor conference call to discuss such documents.

Section 4.04 *Compliance Certificate and Lease/License Certificate.*

(a) The Company and each Guarantor shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company and each Guarantor has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company and each Guarantor has kept, observed, performed and fulfilled and complied with each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as any of the Notes are outstanding, the Company will promptly deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

(c) In relation to each fiscal year, the Company and each Guarantor shall deliver to the Collateral Agent, within 90 days after the end of each fiscal year, a Lease/License Certificate which shall be signed by a senior officer of the Company and each Guarantor and which shall set out in relation to each Lease and License entered into during such fiscal year, and in the case of the first such Lease/License Certificate, in relation to each Lease and License previously entered into by the Company and each Guarantor still then in force and effect:

(i) the name, address and telephone number of the landlord or licensor (as the case may be) under such Lease or License;

(ii) a confirmation as to whether the Company and each Guarantor has assigned all of its rights under such Lease or License (as the case may be) to the Collateral Agent by way of an assignment agreement in a form and substance reasonably satisfactory to the Collateral Agent;

(iii) a confirmation as to whether such Lease or License contains an acknowledgement from the landlord or the licensor (as the case may be) that none of the equipment of the Company and each Guarantor located on the premises to which such Lease or License relates is a fixture; and

(iv) a confirmation as to whether such Lease or License contains (A) any change of control provisions, (B) any provisions restricting the transfer of rights by the lessee or licensee or (C) any similar provisions.

(d) The Company and each Guarantor shall at all times use commercially reasonable efforts to ensure that:

(i) each Lease and License contains an acknowledgement from the landlord or the licensor (as the case may be) that none of the equipment of the Company and Guarantor located on the premises to which such Lease or License relates is a fixture; and

(ii) each Lease and License permits the Company and Guarantor to assign all of its rights under such Lease or License (as the case may be) to the Collateral Agent

(e) The Company and each Guarantor shall ensure that DAVE Leasing or any Unrestricted Subsidiary shall not be party to, be subject to or bound by any Lease or License at any time.

Section 4.05 *Taxes.*

The Company and each Guarantor shall pay and discharge all domestic and foreign federal, state, provincial, territorial municipal and local taxes, assessments and other governmental charges, duties, impositions and liabilities imposed by any Governmental Entity upon the Company and each Guarantor or its assets within the time period allowed without incurring penalties unless and to the extent that such payment is being contested in good faith.

Section 4.06 *Stay, Extension and Usury Laws.*

The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 *Restricted Payments.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Company or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company and other than dividends or distributions payable to the Company or a Restricted Subsidiary of the Company);

(2) purchase, redeem or otherwise acquire or retire for value any Equity Interests of the Company or any of its Restricted Subsidiaries (other than any such Equity Interests owned by the Company or any Restricted Subsidiary of the Company);

(3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Subordinated Indebtedness or Convertible Debentures, except (i) a payment of interest from amounts that were escrowed upon the issuance of Subordinated Convertible Debentures, and (ii) the incurrence by the Company or any of its

Restricted Subsidiaries of Convertible Debentures or New Convertible Debentures which have been issued in payment of accrued interest under the Convertible Debentures or New Convertible Debentures, respectively;

(4) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity thereof; or

(5) make any Restricted Investment

all such payments and other actions set forth in clauses (1) through (5) above being collectively referred to as "*Restricted Payments*",

unless, at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(2) the Company or any of its Restricted Subsidiaries would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the test set forth in clause (1) of Permitted Debt; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Restricted Subsidiaries since the date of this Indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (6) and (7) of paragraph (b) of this Section 4.07), is less than the sum, without duplication of:

(A) the difference between (i) Consolidated EBITDA of Holdings for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the date of this Indenture to the end of Holdings most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment and (ii) 150% of the Consolidated Interest Expense of Holdings for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the date of this Indenture to the end of Holdings most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment; plus

(B) Total Incremental Equity; *plus*

(C) to the extent that any Restricted Investment that was made after the date of this Indenture is sold for cash or otherwise liquidated or repaid for cash, the lesser of (i) cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any), and (ii) the original amount of the Restricted Investment; *plus*

(D) 50% of any dividends received by the Company or a Restricted Subsidiary of the Company after the date of this Indenture from an Unrestricted Subsidiary of the

Company, to the extent that such dividends were not otherwise included in the Consolidated Net Income of Holdings for such period; *plus*

(E) to the extent that any Unrestricted Subsidiary of the Company designated as such after the date of this Indenture is redesignated as a Restricted Subsidiary after the date of this Indenture, the lesser of (i) the Fair Market Value of the Company' Investment in such Subsidiary as of the date of such redesignation and (ii) the Fair Market Value of the Restricted Subsidiary on the date it was designated as an Unrestricted Subsidiary.

(b) So long as no Default has occurred and is continuing or would be caused thereby, the provisions of Section 4.07(a) hereof will not prohibit:

(1) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend, distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of this Indenture;

(2) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of Holdings) of Equity Interests of the Company or any of its Restricted Subsidiaries (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to the Company or any of its Restricted Subsidiaries; *provided* that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded from clause (3)(B) of Section 4.07(a) hereof;

(3) the repurchase, repayment, prepayment, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Company or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(4) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Company (other than Holdings) to the holders of its Equity Interests on a *pro rata* basis;

(5) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company or any Restricted Subsidiary of the Company held by any current or former officer, director or employee of the Company or any of its Restricted Subsidiaries pursuant to any equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed $2,500,000 in any twelve-month period;

(6) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;

(7) payments made to purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Company or a Guarantor that is contractually subordinated to the Notes or to any Guarantee, in each case, pursuant to provisions requiring such Person to offer to purchase, redeem, defease or otherwise acquire or retire for value such subordinated

Indebtedness upon the occurrence of a "change of control" or with the proceeds of "asset sales" as defined in the agreements or instruments governing such subordinated Indebtedness; *provided* however, that a Change of Control Offer or Asset Sale Offer, as applicable, has been made and the Company has purchased all Notes validly tendered in connection with that Change of Control Offer or Asset Sale Offer;

(8) payments or distributions to dissenting stockholders pursuant to applicable law pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of this Indenture applicable to mergers, consolidations and transfers of all or substantially all of our property or assets; and

(9) other Restricted Payments in an aggregate amount not to exceed $2.5 million since the date of this Indenture.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 4.07 will be determined in good faith (a) in the case of assets or securities valued at $10.0 million or less, by a senior financial officer of the Company set forth in a certificate to the Trustee from such officer, and (b) in the case of assets or securities valued at more than US $10.0 million, by the Company's Board of Directors and set forth in an Officers' Certificate delivered to the Trustee. The Board of Directors' determination must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if the Fair Market Value exceeds $25.0 million.

Section 4.08 *Dividend and Other Payment Restrictions Affecting Subsidiaries.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries or, with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Company or any of its Restricted Subsidiaries;

(2) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

(b) However, the restrictions in Section 4.08(a) hereof will not apply to encumbrances or restrictions existing under or by reason of:

(1) agreements governing Existing Indebtedness as in effect on the date of this Indenture and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided* that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of this Indenture;

(2) this Indenture, the Notes, the Note Guarantees and the Collateral Documents;

(3) applicable law, rule, regulation or order;

(4) any agreement or instrument governing Indebtedness or Capital Stock of a Person acquired by, or merged, consolidated or otherwise combined with or into, the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition, merger, consolidation or other combination (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; *provided* that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(5) customary non-assignment provisions in leases, contracts and licenses or related documents entered into in the ordinary course of business;

(6) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of Section 4.08(a) hereof;

(7) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(8) Permitted Refinancing Indebtedness; *provided* that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(9) Liens permitted to be incurred under the provisions of Section 4.12 hereof that limit the right of the debtor to dispose of the assets subject to such Liens;

(10) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into with the approval of the Company's Board of Directors, which limitation is applicable only to the assets that are the subject of such agreements; and

(11) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

Section 4.09 *Incurrence of Indebtedness.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "*incur*") any Indebtedness (including Acquired Debt), and the Company and its Restricted Subsidiaries will not issue any Disqualified Stock.

(b) The provisions of Section 4.09(a) hereof will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "*Permitted Debt*"):

(1) the incurrence by the Company or any Guarantor of additional Indebtedness provided that:

a. the aggregate principal amount of Indebtedness incurred under this clause (1); *plus*

b. Consolidated Indebtedness; *minus*

c. Convertible Debentures that are Subordinated Indebtedness; *minus*

d. New Convertible Debentures; *minus*

e. Subordinated Convertible Debentures;

may not exceed the greater of $350 million and 4.5 times Holdings' Consolidated EBITDA for the four most recently completed fiscal quarters at any one time outstanding;

(2) the incurrence by the Company and its Restricted Subsidiaries of the Existing Indebtedness;

(3) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Restricted Subsidiaries, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (3), not to exceed $10.0 million at any one time outstanding;

(4) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under clauses (1), (2), (3), (10), (11), (12), (15), (16) or (17) of this paragraph;

(5) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries;, *rovided, however*, that:

(a) if the Company or any Guarantor is the obligor on such Indebtedness and the payee is not the Company or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Company, or the Note Guarantee, in the case of a Guarantor; and

(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary of the Company, will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (5);

(6) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business and not for speculative purposes;

(7) the guarantee by the Company or any of the Guarantors of Indebtedness of the Company or a Restricted Subsidiary of the Company that was permitted to be incurred by another provision of this covenant; *provided* that if the Indebtedness being guaranteed is subordinated to or *pari passu* with the Notes, then the guarantee shall be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness guaranteed;

(8) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance or surety bonds or other reimbursement obligations in the ordinary course of business;

(9) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(10) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness to the extent the net proceeds thereof are promptly deposited to defease all outstanding Notes as described in Article 8 hereof;

(11) the incurrence by the Company or any of its Restricted Subsidiaries of First Priority Indebtedness provided that following such incurrence, the aggregate principal amount of First Priority Indebtedness does not exceed the greater of (a) $200 million and (b) three times Holdings' Consolidated EBITDA for the four most recently completed fiscal quarters at any one time outstanding and provided further that such Indebtedness could have been incurred under clause (1) of this paragraph;

(12) the incurrence by the Company or any of its Restricted Subsidiaries of Subordinated Debentures which have been issued in payment of accrued interest under the Subordinated Debentures;

(13) the incurrence by the Company or any of its Restricted Subsidiaries of Subordinated Convertible Debentures in an aggregate principal amount not to exceed $100 million at any one time outstanding;

(14) the issuance by the Company or any of its Restricted Subsidiaries of shares of preferred stock;

(15) the incurrence by the Company or any of its Restricted Subsidiaries of Convertible Debentures which have been issued in payment of accrued interest under the Convertible Debentures;

(16) the incurrence by the Company or any of its Restricted Subsidiaries of the New Convertible Debentures;

(17) incurrence by the Company and the Guarantors of Indebtedness represented by the notes and the related Note Guarantees to be issued on the date of this Indenture; and

(18) the incurrence by the Company or any of its Restricted Subsidiaries of any indebtedness described in clause (c) of the definition of Indebtedness, provided that such

indebtedness does not exceed $10 million outstanding at any one time and is not secured by any Lien.

The Company will not incur, and will not permit any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Company or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the Notes and the applicable Note Guarantee on substantially identical terms; *provided, however*, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Company solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

For purposes of determining compliance with this Section 4.09, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (18) above or is entitled to be incurred pursuant to Section 4.09(a) hereof, the Company will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this Section 4.09, including by allocation to more than one other type of Indebtedness. The outstanding principal amount of any particular Indebtedness shall be counted only once and any obligations arising under any Guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness shall not be double counted. Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that the Company or any Restricted Subsidiary may incur pursuant to this Section 4.09 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

Section 4.10 *Asset Sales.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration received in the Asset Sale by the Company or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

(A) any liabilities, as shown on the Company's most recent consolidated balance sheet, of the Company or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Company or such Restricted Subsidiary from further liability;

(B) any securities, Notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are within 60 days converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents, to the extent of the cash or Cash Equivalents received in that conversion; and

(C) any stock or assets of the kind referred to in clauses (1) or (3) of the next paragraph of this Section 4.10.

Within 360 days after the receipt of any Net Proceeds from an Asset Sale, the Company (or the applicable Restricted Subsidiary, as the case may be):

(x) may apply such Net Proceeds at its option:

(1) to acquire all or substantially all of the assets of, or any Capital Stock of, another Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Company;

(2) to make a capital expenditure that is used in a Permitted Business; or

(3) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business.

(y) to repay the Notes; or

(z) enter into a legally binding agreement to apply such Net Proceeds as described in the preceding clause (x) within six months after such agreement is entered into and apply such Net Proceeds in accordance with the terms of such agreement or the provisions of clause (x) above; provided that if such agreement terminates the Company shall have until the later of (i) 90 days after the date of such termination and (ii) 360 days after the receipt of any Net Proceeds from the Asset Sale to effect such an application.

Pending the final application of any Net Proceeds, the Company or any Restricted Subsidiary may invest the Net Proceeds in any manner that is not prohibited by this Indenture.

Any Net Proceeds from Asset Sales of Collateral that have not been applied in the preceding paragraph of this Section 4.10 since the Issue Date that exceeds $5.0 million will constitute "*Excess Proceeds*." When there are Excess Proceeds, within five days thereof, the Company will make an Asset Sale Offer to all Holders of Notes and all holders of other First Priority Indebtedness that is *pari passu* with the Notes containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets in accordance with Section 3.09 hereof to purchase the maximum principal amount of Notes and such other *pari passu* First Priority Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 101% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash. The date of purchase will be no earlier than 20 days and no later than 60 days from the date notice of the Asset Sale Offer is mailed. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company or any Restricted Subsidiary may use those Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes and other *pari passu* First Priority Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee will select the Notes and such other *pari passu* First Priority Indebtedness to be purchased on a *pro rata* basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

The Company will comply with the requirements of any securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.09 hereof or this Section 4.10, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.09 hereof or this Section 4.10 by virtue of such compliance.

Section 4.11 *Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (each an "*Affiliate Transaction*"), unless:

(1) the Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(2) the Company delivers to the Trustee:

(A) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5.0 million, a resolution of the Board of Directors of the Company set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with clause (1) of this Section 4.11(a) and, if an opinion meeting the requirements set forth in clause (b) below has not been obtained, that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Company who have no direct financial interest in such Affiliate Transaction (other than as a stockholder of Holdings);

(B) with respect to (x) any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10.0 million, (y) an Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5.0 million where none of the members of the Company's Board of Directors qualify as having no direct financial interest in such Affiliate Transaction (other than as a stockholder of Holdings), an opinion as to the fairness to the Company or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing in the United States or Canada.

(b) The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a) hereof:

(1) any transaction by the Company or any Restricted Subsidiary with an Affiliate related to the purchase, sale or distribution of products in the ordinary course of business, which as been approved by a majority of the members of the Board of Directors who are disinterested with respect to such transaction;

(2) any employment agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;

(3) transactions between or among the Company and/or its Restricted Subsidiaries;

(4) transactions with a Person (other than an Unrestricted Subsidiary of the Company) that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(5) payment of reasonable compensation or fees to directors or officers of Holdings and its Subsidiaries;

(6) any sale or issuance of Equity Interests (other than Disqualified Stock) of Holdings to Affiliates of Holdings;

(7) Restricted Payments that do not violate Section 4.07 hereof;

(8) a management fee in lieu of the payment or reimbursement of travel and administrative expenses or other costs to each of DAVE Investments, Quadrangle Capital Partners II LLP and other shareholders of Holdings which, when aggregated, do not exceed $750,000 in any fiscal year of Holdings; and

(9) transactions or agreements in existence on the date of this Indenture, including the Quadrangle Facility and any transactions or agreements among Holdings and the Company, on the one hand, and Dave Leasing, on the other hand (and extensions or amendments thereof on terms which are not materially less favorable to the Company and/or those Restricted Subsidiares that are party thereto than the terms of any such transaction or agreement as in existence on the Issue Date).

Section 4.12 *Liens.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) of any kind on any Collateral now owned or hereafter acquired.

Section 4.13 *Business Activities.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Company and its Restricted Subsidiaries taken as a whole.

Section 4.14 *Corporate Existence.*

Subject to Article 5 hereof, the Company and its Restricted Subsidiaries shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) each of their corporate, partnership or other existence, as the case may be, in accordance with the respective organizational documents (as the same may be amended from time to time) of such Person; and

(2) the rights (charter and statutory), licenses and franchises of the Company and its Restricted Subsidiaries; *provided, however,* that the Company and its Restricted Subsidiaries shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.15 *Offer to Repurchase Upon Change of Control.*

(a) Upon the occurrence of a Change of Control, the Company will make an offer (a *"Change of Control Offer"*) to each Holder to repurchase all or any part of that Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest on the Notes repurchased to the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date the (*"Change of Control Payment"*). Within 30 days following any Change of Control, the Company will mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.15 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 10 days and no later than 60 days from the date such notice is mailed (the *"Change of Control Payment Date"*);

(3) that any Note not tendered will continue to accrue interest;

(4) that, unless the Company defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes or transfer by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $1,000 in principal amount or an integral multiple thereof.

The Company will comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 3.02 or 4.15 hereof, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Sections 3.02or 4.15 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly certify and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.15, the Company will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.15 hereof and purchases all Notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price.

Section 4.16 *Limitation on Sale and Leaseback Transactions.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; *provided* that the Company and any Guarantor may enter into a sale and leaseback transaction if:

(1) the Company or that Guarantor, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the test in clause (1) of Permitted Debt and (b) incurred a Lien to secure such Indebtedness pursuant to the provisions of Section 4.12 hereof; and

(2) the transfer of assets in that sale and leaseback transaction is permitted by, and the Company applies the proceeds of such transaction in compliance with, Section 4.10 hereof.

Section 4.17 *Payments for Consent.*

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Section 4.18 *Future Guarantors.*

The Company will cause each Person becoming a Restricted Subsidiary following the Issue Date to execute and deliver to the trustee within 60 days of becoming a Restricted Subsidiary a joinder pursuant to which such Guarantor will unconditionally guarantee, on a joint and several basis, the full and prompt payment of the principal, premium, and, if any, interest on the Notes on a senior basis; *provided* that any Restricted Subsidiary that constitutes an Immaterial Subsidiary need not become a Guarantor until such time as it ceases to be an Immaterial Subsidiary. Each Restricted Subsidiary that becomes a Guarantor after the date of issuance of the Notes will also become a party to the Collateral Documents and will take such actions are reasonably necessary or advisable to grant the Collateral Agent for the benefit of the holders of the Notes and, the Trustee, a perfected Lien on any Collateral held by such Restricted Subsidiary, subject to Permitted Liens including the entering into of a general security agreement. The form of such joinder is attached as Exhibit B hereto.

Section 4.19 *Designation of Restricted and Unrestricted Subsidiaries.*

The Board of Directors of the Company may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary designated as Unrestricted will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 4.07 hereof or under one or more clauses of the definition of Permitted Investments, as determined by the Company. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Company may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.

Any designation of a Subsidiary of Holdings or the Company as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 hereof. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, the Company will be in default of such covenant. The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company; *provided* that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if (1) such Indebtedness is permitted under clause (1) of Permitted Debt, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Section 4.20 *Payment of Additional Amounts*

(a) All amounts paid or credited by the Company under or with respect to the Notes, or by any Guarantor pursuant to the Guarantees, will be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities or expenses related thereto) (hereinafter, "*Taxes*") imposed or levied by or on behalf of the Government of Canada or the United States or of any province, territory, state or other political subdivision thereof or by any authority or agency therein or thereof having power to tax (each, a "*Relevant Taxing Jurisdiction*"), unless the Company or such Guarantor, as the case may be, is required to withhold or deduct any amount for or on account of Taxes by law or by the interpretation or administration thereof. If the Company or any Guarantor is required to withhold or deduct any amount for or on account of any such Taxes from any amount paid or credited under or with respect to the Notes or the Guarantees, the Company or such Guarantor will pay such additional amounts (the "*Additional Amounts*") as may be necessary so that the net amount received by each owner of a beneficial interest in the Notes (an "*owner*" for the purposes of this Section 4.20) (including Additional Amounts) after such withholding or deduction (including any withholding or deduction in respect of Additional Amounts) will not be less than the amount such owner would have received if such Taxes had not been withheld or deducted; *provided, however*, that Additional Amounts will not be payable to an owner or Holder of Notes with respect to any Taxes to the extent such Taxes ("*Excluded Taxes*") would not have been imposed but for such owner or Holder being an owner or Holder:

(1) in the case of Canadian Taxes, with which the Company or such Guarantor does not deal at arm's length (within the meaning of the Income Tax Act (Canada)) at the time of making a payment, unless the owner or Holder is a resident of the United States and is entitled to the benefit of the Canada – United States Tax Convention;

(2) which is subject to such Taxes by reason of such owner or Holder being connected with the Relevant Taxing Jurisdiction other than solely by reason of the mere acquisition or holding of Notes, the receipt of payments thereunder or the enforcement of the Holder's or owner's rights thereunder;

(3) which failed to duly and timely comply with a timely and reasonable request of the Company to provide information, documents, certification or other evidence concerning such owner's or Holder's nationality, residence, entitlement to treaty benefits, identity or connection with a Relevant Taxing Authority, but only if such owner or Holder is legally entitled to comply with such request and only to the extent that due and timely compliance with such request would have resulted in the reduction or elimination of the Taxes in question; or

(4) which is a fiduciary, a partnership or other Holder that is not the beneficial owner of a note, if and to the extent that any beneficiary or settlor of such fiduciary, any partner in such partnership or the beneficial owner of such note (as the case may be) would not have been entitled to receive Additional Amounts with respect to the payment in question if such beneficiary, settlor, partner or beneficial owner had been the Holder of such Note (but only if there is no material cost or expense associated with transferring such note to such beneficiary, settlor, partner or beneficial owner and no restriction on such transfer that is outside the control of such beneficiary, settlor, partner or beneficial owner).

(b) The Company or such Guarantor will also (a) make such withholding or deduction and (b) remit the full amount deducted or withheld to the relevant authority in accordance with and in the time required under applicable law.

(c) The Company or the Guarantor will furnish the Holders of the Notes, within 30 days after the date the payment of any Taxes is due pursuant to applicable law, evidence of such payment by the Company or such Guarantor. The Company and the Guarantors will indemnify and hold harmless each Holder and owner from and against (x) any Taxes (other than Excluded Taxes) levied or imposed on such Holder or owner as a result of payments or credits made under or with respect to the Notes or the Guarantees, and (y) any Taxes (other than Excluded Taxes) so levied or imposed with respect to any indemnification payments under the foregoing clause (x) or this clause (y) such that the net amount received by such Holder or owner after such indemnification payments will not be less than the net amount the Holder or owner would have received if the Taxes described in clauses (x) and (y) above had not been imposed.

(d) At least 30 days prior to each date on which any payment under or with respect to the Notes is due and payable, if the Company or any Guarantor will be obligated to pay Additional Amounts with respect to such payment, the Company or such Guarantor will deliver to the Trustee an Officer's Certificate stating the fact that such Additional Amounts will be payable and the amounts so payable and will set forth such other information necessary to enable the Trustee to pay such Additional Amounts to Holders or owners on the payment date. Whenever in this Indenture there is mentioned, in any context, the payment of principal, premium, if any, redemption price, Change of Control Payment, Asset Sale Offer purchase price, interest or any other amount payable under or with respect to any note, such mention shall be deemed to include mention of the payment of Additional Amounts or indemnification payments to the extent that, in such context, Additional Amounts or indemnification payments are, were or would be payable in respect thereof.

(e) The Company and the Guarantors will pay any present or future stamp, court, documentary or other excise or property Taxes, charges or similar levies that arise in any Relevant Taxing Jurisdiction from the execution, delivery or registration of, or enforcement of rights under, the Notes, this Indenture, any Guarantee or any related document (*"Documentary Taxes"*).

(f) The obligation to pay any Additional Amounts (and any associated indemnification payments) and Documentary Taxes under the terms and conditions described in this Section 4.20 will survive any termination, defeasance or discharge of this Indenture.

Section 4.21 *Keeping of Books*

The Company and its Restricted Subsidiaries will keep or cause to be kept proper books of record and account, in accordance with GAAP.

Section 4.22 *To Pay Trustee's Remuneration*

The Company will pay the Trustee's reasonable remuneration for its services as Trustee hereunder.

Section 4.23 *To Maintain Insurance*

The Company and each Restricted Subsidiary shall ensure that it will maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business. All insurances must be with reputable independent insurance companies or underwriters.

Section 4.24 *Performance of Covenants by Trustee*

If the Company or any of its Restricted Subsidiaries shall fail to perform any of its covenants contained in this Indenture, the Trustee may notify the Holders of such failure on the part of the Company or may itself perform any of the covenants capable of being performed by it, but shall be under no obligation to do so or to notify the Holders. All sums so expended or advanced by the Trustee shall be repayable as provided in this Indenture. No such performance, expenditure or advance by the Trustee shall be deemed to relieve the Company of any default hereunder.

ARTICLE 5
SUCCESSORS

Section 5.01 *Merger, Consolidation, or Sale of Assets.*

Holdings and the Company shall not, directly or indirectly: (i) consolidate, amalgamate or merge with or into another Person (whether or not Holdings or the Company is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of Holdings and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(1) either:

(A) Holdings or the Company is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than Holdings or the Company) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation organized or existing under the laws of Canada, the United States, any province, territory or any state thereof or the District of Columbia;

(2) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings or the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of Holdings or the Company, as the case may be, under the Notes, this Indenture and the Collateral Documents;

(3) immediately after such transaction, no Default or Event of Default exists;

(4) Holdings, the Company or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings or the Company), or to which such sale, assignment, transfer, conveyance or other disposition has been made would, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period be permitted to incur at least $1.00 of additional Indebtedness pursuant to the test set forth in clause (1) of Permitted Debt;

(5) each surviving Guarantor shall have by supplemental indenture and Collateral Documents confirmed that its Note Guarantee shall apply to Holdings, the Company or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings or the Company) and its obligations under the Collateral Documents shall remain in full force and effect; and

(6) Holdings or the Company, as the case may be, shall have delivered to the Trustee an Officers Certificate and Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture and Collateral Documents (if any) comply with this Indenture and Collateral Documents.

In addition, the Company will not, directly or indirectly, lease all or substantially all of the properties and assets of it and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

This Section 5.01 will not apply to:

(1) a merger of Holdings or the Company with an Affiliate solely for the purpose of reincorporating Holdings or the Company in another jurisdiction that is in Canada or the United States; or

(2) any consolidation, amalgamation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Company or Holdings and its Restricted Subsidiaries.

Section 5.02 *Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of Holdings or the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which Holdings or the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to "Holdings" or the "Company" shall refer instead to the successor Person and not to Holdings or the Company), and may exercise every right and power of Holdings or the Company under this Indenture with the same effect as if such successor Person had been named as Holdings or the Company herein; *provided, however*, that the predecessor Holdings or the Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of Holdings or the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

Each of the following is an "*Event of Default*":

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in the payment when due (at maturity, upon redemption, upon repurchase as required by this Indenture or otherwise) of the principal of, or premium, if any, on, the Notes;

(3) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 4.10, 4.15, 4.20 or 5.01 hereof;

(4) failure by the Company or any of its Restricted Subsidiaries for 60 days after notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in this Indenture or the Collateral Documents;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), whether such Indebtedness or Guarantee now exists, or is created after the date of this Indenture, if that default:

(A) is caused by a failure to pay principal of, or interest or premium, if any, on, such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a "*Payment Default*"); or

(B) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $7.5 million or more;

(6) failure by the Company or any of its Restricted Subsidiaries to pay final non-appealable judgments for the payment of money entered by a court or courts of competent jurisdiction aggregating in excess of $7.5 million, which judgments are not paid, discharged or stayed for a period of 60 days;

(7) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due;

(8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

(9) any Collateral Document ceases to be in full force and effect (except as permitted by the terms of this Indenture or Collateral Documents or other than as a result of the

action or inaction of the Collateral Agent) for a period of 30 consecutive days after the Company receives notice thereof;

(10) except as permitted by this Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee; and

(11) any Collateral Document is declared null and void in a judicial proceeding or the Company or any Guarantor denies or disaffirms its obligations under any Collateral Document.

Section 6.02 *Acceleration.*

In the case of an Event of Default specified in clause (7) or (8) of Section 6.01 hereof, with respect to the Company, any Restricted Subsidiary of the Company that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately.

Upon any such declaration, the Notes shall become due and payable immediately.

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration and its consequences, if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal or interest that has become due solely because of the acceleration) have been cured or waived.

If an Event of Default occurs by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium that the Company would have had to pay if the Company then had elected to redeem the Notes pursuant to Section 3.07 hereof, then, upon acceleration of the Notes, an equivalent premium shall also become and be immediately due and payable, to the extent permitted by law, anything in this Indenture or in the Notes to the contrary notwithstanding.

Section 6.03 *Other Remedies.*

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture, including enforcing all Liens on the Collateral created by the Collateral Documents.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 *Waiver of Past Defaults.*

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes (including in connection with an offer to purchase); *provided, however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 *Control by Majority.*

Subject to Section 7.01(e) hereof, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it (including in its capacity as Collateral Agent). However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines (including by receiving an Opinion of Counsel) may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits.*

Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no Holder of a Note may pursue any remedy with respect to the Indenture or the Notes unless:

(1) such Holder gives to the Trustee prior written notice that an Event of Default is continuing;

(2) Holders of at least 25% in aggregate principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holders have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(5) during such 60-day period, Holders of a majority in aggregate principal amount of the then outstanding Notes have not given the Trustee a direction inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as Trustee of an express trust against the Company for the whole amount of principal of, premium, if any, and interest remaining unpaid on, the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities.*

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

First: to the Trustee and Collateral Agent, its agents and attorneys for amounts due under Section 7.06 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium, if any and interest, respectively; and

Third: to the Company or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to any suit by the Trustee, any suit by a Holder of a Note pursuant to Section 6.07 hereof, or any suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

ARTICLE 7
TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee will be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own grossly negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(3) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holder has offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall not be bound to do or give any notice or take any act, action, proceeding for the enforcement of any of the obligations of the Company or any Guarantor under this Indenture unless and until it shall have received a direction pursuant to Section 6.05 specifying the act, action or proceeding which the Trustee is requested to take, nor shall the Trustee be required to take notice of any default hereunder, unless and until notified in writing of such default, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee and, in the absence of any such notice, the Trustee may for all purposes of this Indenture conclusively assume that no default has been made in the observance or performance of any of the representations, debentures, covenants, agreements, or conditions contained herein.

(h) No duty shall rest with the Trustee to determine compliance of the transferor or transferee with applicable securities laws. The Trustee shall be entitled to assume that all transfers are legal and proper.

Section 7.02 *Rights of Trustee.*

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(f) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee reasonable indemnity or security against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(g) The permissive rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, including acting as a receive or manager of the assets of the Company and Guarantors.

Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. The Trustee is also subject to Section 7.09 hereof.

Section 7.04 *Trustee's Disclaimer.*

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of certification.

Section 7.05 *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is actually known to the Trustee, the Trustee will mail to Holders of Notes a notice of the Default or Event of Default within 90 days after it occurs unless such Default or Event of Default shall have been cured or waived before the giving of such notice.

Section 7.06 *Compensation and Indemnity.*

(a) The Company shall pay the Trustee reasonable remuneration for its services as trustee hereunder and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts hereby created (including the reasonable compensation and the disbursements of Trustee counsel and all other advisers and assistants not regularly in its employ who have been retained by the Trustee) both before any default hereunder and thereafter until all the duties of the Trustee shall be firmly and fully performed, except any such expense, disbursement or advance as may arise from failure to perform its obligations hereunder. Any amount due under this Section 7.06 and unpaid 30 days after request for such payment shall bear interest from the expiration of such 30 days at a rate per annum equal to the then current rate charged by the Trustee from time to time, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payment of the principal of, or interest or premium, if any, on, the Notes. Such remuneration shall continue to be payable until the trusts hereof shall be finally wound up, whether or not the trusts of this Indenture shall be in course of administration by or under the direction of a court.

(b) The Company and the Guarantors will jointly and severally indemnify the Trustee, or any predecessor Trustee, (and its officers, agents, directors and employees) against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and the Guarantors (including this Section 7.06) and defending itself against any claim (whether asserted by the Company, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its gross negligence or bad faith. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company or any of the Guarantors of their obligations hereunder. The Company or such Guarantor will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld. Without limiting the generality of the foregoing, the obligation to indemnify, defend and save harmless in accordance herewith shall apply in respect of liabilities suffered by, imposed upon, incurred in any way connected with or arising from, directly or indirectly, any Environmental Laws.

(c) The obligations of the Company and the Guarantors under this Section 7.06 will survive the satisfaction and discharge of this Indenture and shall survive the removal or resignation of the Trustee under this Indenture.

(d) To secure the Company's and the Guarantors' payment obligations in this Section 7.06, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(7) or (8) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07 *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.09 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.09 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.06 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 hereof will continue for the benefit of the retiring Trustee.

Section 7.08 *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.09 *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of Canada or of any province thereof that is authorized under such laws to exercise corporate trust powers.

ARTICLE 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note Guarantees) on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company and the

Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following rights, obligations and provisions which will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium, if any, on, such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to the Notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment and money for security payments held in trust including under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and the Guarantors' obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.15, 4.16, 4.17, 4.18, 4.19 and 4.20 hereof and clause (4) of Section 5.01 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Company and the Guarantors may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) through 6.01(5) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in Canadian dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank in the United States or Canada, appraisal firm, or firm of independent public accountants, to pay the principal of, premium, if any, and interest on, the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(2) in the case of Legal Defeasance or Covenant Defeasance, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders and beneficial owners of the outstanding Notes will not recognize income, gain or loss for Canadian federal, provincial, territorial income tax or other tax purposes as a result of such Legal Defeasance or Covenant Defeasance, as applicable, and will be subject to Canadian federal, provincial or territorial income tax and other tax on the same amounts, if any, in the same manner and at the same times as would have been the case if such Legal Defeasance or Covenant Defeasance, as the case may be, had not occurred (which condition may not be waived by any Holder of outstanding Notes or the Trustee);

(3) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(4) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of its Restricted Subsidiaries is a party or by which the Company or any of its Restricted Subsidiaries is bound;

(5) the Company must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Notes over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(6) the Company must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 *Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.06 hereof, all money and non-callable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "*Trustee*") pursuant to Section 8.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04

hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 *Repayment to Company.*

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium, if any, or interest on, any Note and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the Globe and Mail, notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any Canadian dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's and the Guarantors' obligations under this Indenture and the Notes and the Note Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided, however*, that, if the Company makes any payment of principal of, premium, if any, or interest on, any Note following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, the Company, the Guarantors and the Trustee may amend or supplement this Indenture or the Notes or the Note Guarantees or the Collateral Documents without the consent of any Holder of Note:

(1) to cure any ambiguity, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes;

(3) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders of the Notes and Note Guarantees by a successor to the Company or such Guarantor pursuant to Article 5 or Article 10 hereof;

(4) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any Holder;

(5) to conform the text of this Indenture, the Note Guarantees, the Notes or the Collateral Documents to any provision of the "Description of Notes" section of the Company's Offering Memorandum dated April 25, 2011 (the "Description of Notes"), relating to the initial offering of the Notes, to the extent that such provision in that "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture, the Note Guarantees, the Notes or the Collateral Documents or to the extent any provision of this Indenture, the Note Guarantees, the Notes or the Collateral Documents differs in a material respect from any provision of the Description of Notes;

(6) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the date hereof;

(7) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes;

(8) provide for the succession of a successor Trustee or Collateral Agent under this Indenture;

(9) expand the Collateral securing the Notes or Note Guarantees, and, in the case of the Collateral Documents, to or for the benefit of the other secured parties named therein or to confirm and evidence the release, termination or discharge of any Note Guarantee of or Lien securing the Notes when such release, termination or discharge is permitted by this Indenture and the Collateral Documents;

(10) provide for the accession or succession of any parties to the Collateral Documents (and other amendments that are administrative or ministerial in nature) in connection with an amendment, renewal, extension, substitution, refinancing, restructuring, replacement, supplementing or other modification from time to time of the Notes or any other agreement or action that is not prohibited by this Indenture; or

(11) provide for the release or addition of Collateral in accordance with the terms of this Indenture and the Collateral Documents.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture (including, without limitation, Section 3.09, 4.10 and 4.15 hereof) and the Notes and the Note Guarantees and the Collateral Documents with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture or the Notes or the Note Guarantees or Collateral Documents may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes (including, without limitation, Additional Notes, if any) voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture or Collateral Documents, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of such amended or supplemental indenture or Collateral Documents unless such amended or supplemental indenture or Collateral Documents directly affects the Trustee's own rights, duties or immunities under this Indenture, Collateral Documents or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture or Collateral Documents.

It is not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture, Collateral Documents or waiver. Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture or the Notes or the Note Guarantees or the Collateral Documents. However, without the consent of each Holder affected, an amendment, supplement or waiver under this Indenture may not:

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes (except as provided above with respect to Sections 3.09, 4.10 and 4.15 hereof);

(3) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or premium, if any, or interest on, the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium, if any, on, the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Sections 3.09, 4.10 or 4.15 hereof);

(8) release any Guarantor from any of its obligations under its Note Guarantee or this Indenture, except in accordance with the terms of this Indenture;

(9) make any change to the Collateral Documents that would in any way be adverse to the holders of the Notes;

(10) impair the right to institute suit for the enforcement of any payment on or with respect to the Notes or the Note Guarantees;

(11) amend, change, modify or waive the obligation of the Company to make and consummate a Change of Control Offer or an Asset Sale Offer, including, in each case, by amending, changing, or modifying any definitions relating to such offers, after the obligation to make either such offer has arisen;

(12) amend or modify any of the provisions of this Indenture or the related definitions affecting the ranking of the Notes or any Note Guarantee in any manner adverse to holders of the Notes or any Note Guarantee; or

(13) make any change in the preceding amendment and waiver provisions.

Section 9.03 *Compliance with Applicable Legislation.*

Every amendment or supplement to this Indenture or the Notes will be set forth in an amended or supplemental indenture that complies with Application Legislation (as defined in Section 12.01).

Section 9.04 *Revocation and Effect of Consents.*

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 *Notation on or Exchange of Notes.*

The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Certification Order, certify new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 *Trustee to Sign Amendments, etc.*

The Trustee will sign any amended or supplemental indenture or Collateral Documents authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture or Collateral Documents until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture or Collateral Documents, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 12.03 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

ARTICLE 10
NOTE GUARANTEES

Section 10.01 *Guarantee.*

(a) Subject to this Article 10, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note certified and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on, the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders, the Trustee or the Collateral Agent under this Indenture, any supplemental indenture, the Notes and the Collateral Documents will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. The liability of each Guarantor shall bear interest from the date any such amount so guaranteed was due at the rate or rates of interest then applicable to such obligations or amount under and calculated in the manner provided in this Indenture.

Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of (i) any bankruptcy or insolvency proceeding with respect to the Company or any

Restricted Subsidiary or any other Person; (ii) any limitation, discharge, or cessation of the liability of the Company or any other Person for any obligations under this Indenture, any supplemental indenture or the Notes due to any statute, regulation or rule of law, or any invalidity or unenforceability in whole or in part of any of obligations thereunder; (iii) any sale, lease, transfer or other disposition of any or all of the assets of the Company, any Restricted Subsidiary or other Person, including any sale of any interest in the Company; (iv) any claim, defence, counterclaim or setoff, other than that of prior performance, that the Company, any Restricted Subsidiary, or any other Person may have or assert, including any defence of incapacity or lack of capacity to execute or deliver this Indenture or any other document related to this Note Guarantee; (v) the Holders' vote, claim, distribution, election, acceptance, action or inaction in any bankruptcy or insolvency proceeding related to the obligations guarantee by this Note Guarantee; (vi) any change in the name, objects, Capital Stock or constitution of the Company or any Restricted Subsidiary, (vii) any waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of this Indenture, the Notes, or any of the Collateral, now or hereafter acquired by the Company in which a security interest shall exist in favour of any of the Trustee, the Collateral Agent or the Holders to secure the obligations guaranteed by this Note Guarantee, whether by operation of law or otherwise; (viii) the Trustee or the Collateral Agent's exercise or non-exercise of any power, right or remedy with respect to any of the Collateral, including the Holders' compromise, release, settlement or waiver with or of any of the Company or any other Person; (ix) any impairment or invalidity of any of the Collateral or any failure to perfect any of the Trustee's, Collateral Agent's or Holders' security interests thereon or therein; and (x) any other guarantee, whether by any Restricted Subsidiary or any other Person, of all or any part of the obligations guaranteed by this Note Guarantee or any other indebtedness, obligations or liabilities of the Company to the Holders. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) The Trustee and the Holders shall not be bound to exhaust their recourse against the Company or any other Person being entitled to payment under this Note Guarantee and each Guarantor renounces all benefits of discussion and division.

(d) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(e) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

(f) Until all of the obligations guaranteed under this Note Guarantee have been paid in full, each Guarantor irrevocably waives any rights which it may have at any time by reason of the performance of any of its obligations under this Note Guarantee (i) to be indemnified by the Company, (ii) to claim contribution from any other Guarantor of the debts, liabilities or obligations of the Company, or (iii) to take the benefit (in while or in part whether by way of subrogation or otherwise) of any rights of the Trustee, the Collateral Agent or the Holders under this Indenture, any supplemental indenture, the Notes or any Collateral Document.

Section 10.02 *Limitation on Guarantor Liability.*

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law or any similar federal or provincial law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 10.03 *Execution and Delivery of Note Guarantee.*

To evidence its Note Guarantee set forth in Section 10.01 hereof, each Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form attached as Exhibit B hereto will be endorsed by an Officer of such Guarantor on each Note certified and delivered by the Trustee and that this Indenture will be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 10.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee certifies the Note on which a Note Guarantee is endorsed, the Note Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the certification thereof hereunder, will constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

Section 10.04 *Guarantors May Consolidate, etc., on Certain Terms.*

Except as otherwise provided in Section 10.05 hereof, no Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with, amalgamate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(2) either:

(a) subject to Section 10.05 hereof, the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger unconditionally assumes all the obligations of that Guarantor under this Indenture, its Note Guarantee and the Collateral Documents on the terms set forth herein or therein, pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee; or

(b) the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation, Section 4.10 hereof.

In case of any such consolidation, merger, sale, amalgamation or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee and its counsel, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee. All the Note Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding clauses 2(a) and (b) above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

Section 10.05 *Releases.*

(a) In the event of any sale or other disposition of all or substantially all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all of the Capital Stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transactions) the Company or a Restricted Subsidiary of the Company, then such Guarantor (in the event of a sale or other disposition, by way of merger, consolidation or otherwise, of all of the Capital Stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Note Guarantee and the Collateral Documents; *provided* that the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation Section 4.10 hereof. Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Section 4.10 hereof, the Trustee will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee and the Collateral Documents.

(b) Upon designation of any Guarantor as an Unrestricted Subsidiary in accordance with the terms of this Indenture, such Guarantor will be released and relieved of any obligations under its Note Guarantee and the Collateral Documents.

(c) Upon Legal Defeasance in accordance with Article 8 hereof or satisfaction and discharge of this Indenture in accordance with Article 11 hereof, each Guarantor will be released and relieved of any obligations under its Note Guarantee and the Collateral Documents.

Any Guarantor not released from its obligations under its Note Guarantee and the Collateral Documents as provided in this Section 10.05 will remain liable for the full amount of principal of and interest and premium, if any, on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 10.

Section 10.06 *Continuing Guarantee*

This Note Guarantee is a continuing guarantee, extending to all present and future obligations guaranteed hereby, and applying to and securing the ultimate balance of the amounts guaranteed hereby due or remaining due to the Trustee, the Collateral Agent and the Holders. This Note Guarantee shall be binding as a continuing obligation of each Guarantor until the Trustee releases such Guarantor in accordance with the terms of this Indenture. This Note Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the amounts guaranteed hereby is rescinded or must otherwise be returned by the Trustee or the Holders upon the insolvency, bankruptcy, or reorganization of the Company, all as though such payment has not been made.

ARTICLE 11
SATISFACTION AND DISCHARGE

Section 11.01 *Satisfaction and Discharge.*

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder. when:

(1) either:

(a) all Notes that have been certified, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in Canadian dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(3) the Company or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 11.01, the provisions of Sections 11.02 and 8.06 hereof will survive. In addition, nothing in this Section 11.01 will be deemed to discharge those provisions of Section 7.06 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 11.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 11.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or interest on, any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 12
MISCELLANEOUS

Section 12.01 *Trust Indenture Legislation.*

In this Section 12.01, the term "Applicable Legislation" means the provisions, if any, of any statute of Canada or a province thereof, and of regulations under any such statute, relating to trust indentures and to the rights, duties, and obligations of trustees under trust indentures and of Persons issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Indenture.

If and to the extent that any provision of this Indenture limits, qualifies, or conflicts with a mandatory requirement of Applicable Legislation, such mandatory requirement shall prevail.

The Company, the Trustee, and each Holder shall at all times, in relation to this Indenture and any action to be taken hereunder, observe and comply with and be entitled to the benefits of Applicable Legislation, as applicable.

Section 12.02 *Notices.*

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Guarantor:

Data & Audio-Visual Enterprises Wireless Inc.
101 Exchange Avenue
Vaughan, ON L4K 5R6
Facsimile No.: (416) 650-9706
Attention: Chief Operating Officer

With a copy to:
Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9
Facsimile No.: (416) 947-0866
Attention: Dee Rajpal

If to the Trustee:
Equity Financial Trust Company
200 University Avenue, Suite 400
Toronto, ON M5H 4H1
Facsimile No.: (416) 361-0470
Attention: Corporate Trust

The Company, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if transmitted by facsimile; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee at the same time.

Section 12.03 *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.04 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.04 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 12.04 *Statements Required in Certificate or Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture and must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 12.05 *Meetings.*

a) The Trustee may make reasonable rules for action by or at a meeting of Holders. The Paying Agent may make reasonable rules and set reasonable requirements for its function.

b) The Trustee or the Company may at any time and from time to time, and the Trustee shall, on receipt of a written request of the Company or a written request signed by the holders of not less than 25% of the aggregate principal amount of Notes then outstanding and upon receiving funding and being indemnified to its reasonable satisfaction by the Company or by the Holders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting, convene a meeting of the Holders. In the event of the Trustee failing, within 30 days after receipt of any such request and such funding and indemnity, to give notice convening a meeting, the Company or such Holders, as the case may be, may convene such meeting. Every such meeting shall be held in the City of Toronto, Ontario or at such other place as may be approved or determined by the Trustee.

c) An individual, who need not be a Holder, nominated in writing by the Company (if the Company convenes the meeting) or the Trustee (in any other case) shall be chairman of the meeting and if no individual is so nominated, or if the individual so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, a majority of the Holders present in person or by proxy shall choose some individual present to be chairman.

d) The chairman of any meeting may, with the consent of the holders of a majority in principal amount of the Notes represented thereat, adjourn any such meeting and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

e) Every question submitted to a meeting shall, subject to Section 12.05(f), be decided by a show of hands. At any such meeting, unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact. The chairman of any meeting shall be entitled, both on a show of hands and on a poll, to vote in respect of the Notes, if any, held by him or which are represented by a proxy given in his favour.

f) On any question submitted to a meeting when demanded by the chairman or by one or more Holder or proxies for Holders, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct.

g) A Holder may be present and vote at any meeting of Holders by an authorized representative. The Company (in case it convenes the meeting) or the Trustee (in any other case) for the purpose of enabling the Holders to be present and vote at any meeting without producing their Notes, and of enabling them to be present and vote at any such meeting by proxy and of lodging instruments appointing such proxies at some place other than the place where the meeting is to be held, may from time to time make and vary such regulations as it shall think fit providing for and governing any or all of the following matters:

   i. the form of the instrument appointing a proxy, which shall be in writing, and the manner in which the same shall be executed and the production of the authority of any Person signing on behalf of a Holder;

   ii. the deposit of instruments appointing proxies at such place as the Trustee, the Company or the Holder convening the meeting, as the case may be, may, in the notice convening the meeting, direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same must be deposited; and

   iii. the deposit of instruments appointing proxies at some approved place or places other than the place at which the meeting is to be held and enabling particulars of such instruments appointing proxies to be mailed, faxed, or sent by other electronic means before the meeting to the Company or to the Trustee at the place where the same is to be held and for the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Save as such regulations may provide, the only Persons who shall be recognized at any meeting as the holders of any Notes, or as entitled to vote or be present at the meeting in respect thereof, shall be Holders and their authorized representatives and Persons whom Holders have by instrument in writing duly appointed as their proxies.

h) The Company and the Trustee, by their respective trustees, employees, officers and directors, the auditors of the Company and the legal advisers of the Company, the Trustee or any Holder may attend any meeting of the Holders, but shall have no vote as such.

i) Minutes of all resolutions and proceedings at every meeting as aforesaid shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Company, and any such minutes as aforesaid, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Holders, shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings taken thereat to have been duly passed and taken.

j) Every resolution passed in accordance with the provisions of this Section 12.05 at a meeting of Holders shall be binding upon all the Holders, whether present at or absent from such meeting.

Section 12.06 *No Personal Liability of Directors, Officers, Employees and Stockholders.*

No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Notes, this Indenture, the Note Guarantees, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 12.07 *Governing Law.*

This Indenture, the Notes, the Note Guarantees and the Collateral Documents will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated as Ontario contracts.

Section 12.08 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.09 *Successors.*

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 10.05 hereof.

Section 12.10 *Severability.*

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 12.11 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement.

Section 12.12 *Table of Contents, Headings, etc.*

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 12.13 *Currency.*

Except as otherwise provided herein, all references in this Indenture to "dollars" or "$" are to lawful money of Canada.

Section 12.14 *Day not a Business Day.*

In the event that any calendar day on or before which any action required to be taken hereunder is not a Business Day, then such action shall be required to be taken on or before the requisite time on the next succeeding calendar day that is a Business Day.

Section 12.15 *Time of the Essence.*

Time shall be of the essence in this Indenture.

Section 12.16 *Benefits of Indenture.*

Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any Paying Agent, the holders of Notes and the Trustee, any benefit or any legal or equitable right, remedy or claim under this Indenture.

[Signature Pages Follow]

SIGNATURES

Dated as of April 29, 2011

DATA AND AUDIO-VISUAL ENTERPRISES WIRELESS INC., Issuer

By: ______________________
Name:
Title:

DATA AND AUDIO-VISUAL ENTERPRISES HOLDINGS INC., Guarantor

By: ______________________
Name:
Title:

DATA AND AUDIO-VISUAL ENTERPRISES LEASING INC., Guarantor

By: ______________________
Name:
Title:

EQUITY FINANCIAL TRUST COMPANY, as Trustee and Collateral Agent

By: ______________________
Name:
Title:

By: ______________________
Name:
Title:

SIGNATURES

Dated as of April 29, 2011

DATA AND AUDIO-VISUAL ENTERPRISES WIRELESS INC., Issuer

By: ______________________________
Name:
Title:

DATA AND AUDIO-VISUAL ENTERPRISES HOLDINGS INC., Guarantor

By: ______________________________
Name:
Title:

DATA AND AUDIO-VISUAL ENTERPRISES LEASING INC., Guarantor

By: ______________________________
Name:
Title:

EQUITY FINANCIAL TRUST COMPANY, as Trustee and Collateral Agent

By: ______________________________
Name: Kathy Thorpe
Title: Senior Trust Officer

By: ______________________________
Name: C. MYLOS
Title: SENIOR ADVISOR TRUST SERVICES

5818952 v8

EXHIBIT A

CUSIP: [ ]

No. ___ $195,000,000

DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC.

9.5% FIRST LIEN SENIOR SECURED NOTES DUE APRIL 29, 2018

Data & Audio-Visual Enterprises Wireless Inc. (the "Company") for value received hereby promises to pay to CDS & Co., the registered holder hereof (the "Holder"), on April 29, 2018 (the "Maturity"), or on such earlier date as the principal (or a portion thereof) may become due and payable in accordance with the provisions of the Indenture (as defined below), on presentation and surrender of this 9.5% First Lien Senior Secured Note due April 29, 2018 (the "Note"), the principal amount in lawful money of Canada at the office of Equity Financial Trust Company (the "Trustee") at 200 University Ave., Suite 400, Toronto, Ontario M5H 4H1, and to accrue interest from the date hereof (the "Issue Date") and pay interest on the principal at the rate of 9.5% per annum, at the address of the Holder appearing on the register of the Notes maintained by or at the direction of the Trustee.

Registered in the name of CDS & Co.

9.5% FIRST LIEN SENIOR SECURED NOTES DUE APRIL 29, 2018

This Note is a Global Note within the meaning of the Trust Indenture dated as of April 29, 2011 between Data & Audio-Visual Enterprises Wireless Inc. and Equity Financial Trust Company (the "Indenture") and is registered in the name of a Depository or a nominee thereof. This Note may not be transferred to or exchanged for Notes registered in the name of any Person other than the Depository or a nominee thereof and no such transfer may be registered except in the limited circumstances described in the Indenture. Every Note certified and delivered upon registration of, transfer of, or in exchange for, or in lieu of, this Note shall be a Global Note subject to the foregoing, except in such limited circumstances described in the Indenture.

Unless this certificate is presented by an authorized representative of CDS Clearing and Depository Services Inc. ("CDS") to Data & Audio-Visual Enterprises Wireless Inc. (the "Company") or its agent for registration of transfer, exchange or payment, and any certificate issued in respect thereof is registered in the name of CDS & CO., or in such other name as is requested by an authorized representative of CDS (and any payment is made to CDS & CO. or to such other entity as is requested by an authorized representative of CDS), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered holder hereof, CDS & CO., has a property interest in the securities represented by this certificate herein and it is a violation of its rights for another person to hold, transfer or deal with this certificate.

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS 4 MONTHS AND A DAY AFTER THE LATER OF (I) APRIL 29, 2011, AND (II) THE DATE THE ISSUER BECAME A REPORTING ISSUER IN ANY PROVINCE OR TERRITORY.

[THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAW AND MAY BE OFFERED, SOLD OR OTHERWISE TRANSFERRED ONLY (A) TO THE ISSUER, (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE ACT, (C) WITHIN THE UNITED STATES IN COMPLIANCE WITH (I) RULE 144 UNDER THE ACT, OR (II) RULE 144A UNDER THE ACT, AND IN EACH CASE IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, OR (D) IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE ACT OR ANY APPLICABLE STATE SECURITIES LAWS, AND THE HOLDER HAS, PRIOR TO SUCH SALE, FURNISHED TO THE ISSUER AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER.

DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA. AT ANY TIME THAT THE ISSUER IS A "FOREIGN ISSUER" (AS DEFINED IN RULE 902 UNDER THE ACT), A NEW CERTIFICATE, BEARING NO LEGEND, THE DELIVERY OF WHICH WILL CONSTITUTE "GOOD DELIVERY" MAY BE OBTAINED FROM THE TRUSTEE UPON DELIVERY OF THIS CERTIFICATE AND A DULY EXECUTED DECLARATION, IN A FORM SATISFACTORY TO THE ISSUER, TO THE EFFECT THAT THE SALE OF THE SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE ACT AND, IF REQUESTED BY THE ISSUER OR THE TRUSTEE, AN OPINION OF COUNSEL OF RECOGNIZED STANDING, EACH IN A FORM SATISFACTORY TO THE THE ISSUER, TO THE EFFECT THAT SUCH SALE OF THE

SECURITIES REPRESENTED HEREBY IS BEING MADE IN COMPLIANCE WITH RULE 904 OF REGULATION S UNDER THE ACT.][INCLUDE IN US NOTE ONLY]

Capitalized terms used herein have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) *INTEREST.* The Company promises to pay interest on the principal amount of this Note at 9.5% per annum from April 29, 2011 until maturity which is April 29, 2018. The Company will pay interest semi-annually in arrears on March 31 and September 30 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an "*Interest Payment Date*").. The first Interest Payment Date shall be September 30, 2011. The Company will pay interest on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect to the extent lawful. Interest will be computed on the basis of a 365-day year. In the case of any interest period that is shorter than a full semi-annual interest period, interest will be calculated on the basis of a 365-day year and the actual number of days elapsed in that period.

(2) *METHOD OF PAYMENT.* The Company will pay interest on the Notes to the Persons who are registered Holders of Notes at the close of business on the March 15 and September 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date. Such payment will be in such coin or currency of Canada as at the time of payment is legal tender for payment of public and private debts.

(3) *INDENTURE.* The Company issued the Notes under a Trust Indenture dated as of April 29, 2011 (the "*Indenture*") among the Company, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

(4) *GUARANTEE.* For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture (a) the due and punctual payment of the principal of, premium and Additional Amounts, if any, and interest on, the Notes, whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of and interest on the Notes, if any, if lawful, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 10 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee.

(5) *OPTIONAL REDEMPTION.* At any time and from time to time prior to the third anniversary of the Issue Date, upon not less than 30 nor more than 60 days' prior written notice, the Company, at its option, may redeem the Notes, in whole or in part, at a redemption price equal to the sum of (i) 100% of the principal amount of the Notes to be redeemed, *plus* (ii) the greater of (x) the Applicable Premium as of the redemption date and (y) 1%, *plus* (iii) accrued

and unpaid interest on such Notes to but not including the redemption date (subject to the right of holders of the Notes on the relevant record date to receive interest due on an interest payment date falling on or prior to the redemption date).

At any time and from time to time prior to the third anniversary of the Issue Date, upon not less than 30 nor more than 60 days' prior written notice, the Company, at its option, may redeem up to 35% of the aggregate principal amount of the Notes, in whole or in part, at a redemption price equal to 109.5% of the principal amount of the Notes to be redeemed *plus* accrued and unpaid interest on such Notes to but not including the redemption date (subject to the right of holders of the Notes on the relevant record date to receive interest due on an interest payment date falling on or prior to the redemption date) with the net cash proceeds of an Equity Offering by Holdings; provided that:

(1) at least 65% of the aggregate principal amount of the Notes originally issued under the Indenture remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

On or after the third anniversary of the Issue Date, the Company may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest on the Notes redeemed, to the applicable redemption date, if redeemed during the twelve-month periods indicated below, subject to the rights of holders of Notes on the relevant record date to receive interest on the relevant interest payment date:

Year	Percentage
third to fourth anniversary of the Issue Date.....	104.75%
fourth to fifth anniversary of the Issue Date......	103.17%
fifth to sixth anniversary of the Issue Date........	102.375%
sixth anniversary of the Issue Date and thereafter..	100.00%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(6) *MANDATORY REDEMPTION.*

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *REPURCHASE AT THE OPTION OF HOLDER.*

(a) If there is a Change of Control, each Holder of Notes will have the right to require the Company to make an offer (a "*Change of Control Offer*") to such Holder to repurchase all or any part (equal to $1,000 or an integral multiple thereof) of such Holder's Notes at a purchase price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest to the date of purchase, subject to the rights of Holders on the relevant record date to receive interest due on the relevant interest payment date (the "*Change of Control Payment*").

(b) When there are Excess Proceeds, within five days thereof, the Company will make an Asset Sale Offer to all holders of Notes and all holders of other First Priority Indebtedness that is pari passu with the Notes containing provisions similar to those set forth in the Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such other pari passu First Priority Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 101% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash.

(8) *DENOMINATIONS, TRANSFER, EXCHANGE.* The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1,000. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part.

(9) *ISSUE OF SUBSTITUTIONAL NOTES.* If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company shall issue and the Trustee, upon receipt of a written order of the Company signed by one Officer of the Company, shall certify a new Note of like date and tenor as the one mutilated, lost, destroyed, or stolen in exchange for and in place of and upon cancellation of such mutilated Note or in lieu of and in substitution for such lost, destroyed, or stolen Note. The substituted Note shall be in a form approved by the Trustee and shall be entitled to the benefit hereof and rank equally in accordance with its terms with all other Notes. The applicant for a new Note shall bear the cost of the issue thereof and in case of loss, destruction, or theft shall, as a condition precedent to the issue thereof, furnish to the Company and to the Trustee such evidence of ownership and of the loss, destruction, or theft of the Note so lost, destroyed, or stolen as shall be satisfactory to the Company and to the Trustee in their discretion, and such applicant shall also furnish indemnity and a third party surety bond, in amount and form satisfactory to the Company and the Trustee in their discretion, and shall pay the reasonable charges of the Company and the Trustee in connection therewith.

(10) *PERSONS DEEMED OWNERS.* The registered Holder of a Note may be treated as its owner for all purposes.

(11) *AMENDMENT, SUPPLEMENT AND WAIVER.* Subject to certain exceptions, the Indenture, the Notes, the Note Guarantees and the Collateral Documents may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes voting as a single class, and any existing Default or Event or Default or compliance with any provision of the Indenture or the Notes or the Note Guarantees or the Collateral Documents may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes voting as a single class. In certain circumstances the Indenture, the Notes, the Note Guarantees and the Collateral Documents may be amended or supplemented without the consent of any Holder of a Note.

(12) *TRUSTEE DEALINGS WITH COMPANY.* The Trustee, in its individual or any other capacity, or its affiliates or ultimate parent may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

(13) *NO RECOURSE AGAINST OTHERS.* A director, officer, employee, incorporator or stockholder of the Company or any of the Guarantors, as such, will not have any liability for any obligations of the Company or the Guarantors under the Notes, the Note Guarantees, the Indenture or the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

(14) *CERTIFICATION.* This Note will not be valid until certified by the manual signature of the Trustee or a certification agent.

(15) *GOVERNING LAW.* The Indenture, the Notes, the Note Guarantees and the Collateral Documents will be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable in Ontario.

Dated: April 29, 2011

DATA & AUDIO-VISUAL ENTERPRISES
WIRELESS INC.

By: ______________________________
Name:
Title:

This is one of the Notes referred to
in the within-mentioned Indenture:

EQUITY FINANCIAL TRUST COMPANY
as Trustee

By: ______________________________
Authorized Signatory

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: ______________________________

(Insert assignee's legal name)

____

(Insert assignee's social insurance number)

____

____

____

____

(Print or type assignee's name, address and Postal Code)

and irrevocably appoint ______________________________
to transfer this Note on the books of th Company. The agent may te another to act fo m.

Date: ______________

Signature of Transferor: ______________________

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee: ______________________

NOTICE: The signature to this transfer must correspond in every particular with the name as shown on the f. ce of this certificate and the endorsement must be signature guaranteed, in either case, by a Canadian Schedule I Chartered Bank, or by a medallion signature guarantee from a member recognized under the Signature Medallion Guarantee Program or from a similar entity in the United States. The stamp affixed thereon by the guarantor must bear the actual words "signature guarantee", OR "signature medallion guarantee" or in accordance with industry standards.

EXHIBIT B

FORM OF JOINDER

For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of April __, 2011 (the "*Indenture*") among Data & Audio-Visual Enterprises Wireless Inc., (the "*Company*"), the Guarantors party thereto and Equity Financial Trust Company, as trustee (the "*Trustee*"), (a) the due and punctual payment of the principal of, premium and Additional Amounts, if any, and interest on, the Notes, whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of and interest on the Notes, if any, if lawful, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 10 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee. The undersigned hereby acknowledges and agrees to the terms of the Indenture and agrees to be bound by all obligations of a Guarantor thereunder from and after the date hereof. Capitalized terms used but not defined herein have the meanings given to them in the Indenture.

[NAME OF GUARANTOR(S)]

By: ______________________________

Name:

Title:

EXHIBIT C

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this *"Supplemental Indenture"*), dated as of ______________, 20__, among ________________ (the *"Guaranteeing Subsidiary"*), a subsidiary of __________________ (or its permitted successor), a [ ] corporation (the *"Company"*), the Company, the other Guarantors (as defined in the Indenture referred to herein) and Equity Financial Trust Company, as trustee under the Indenture referred to below (the *"Trustee"*).

W I T N E S S E T H

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the *"Indenture"*), dated as of April 29, 2011 providing for the issuance of 9.5% First Lien Senior Secured Notes due April 29, 2018 (the *"Notes"*);

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Notes and the Indenture on the terms and conditions set forth herein (the *"Note Guarantee"*); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Note Guarantee and in the Indenture including but not limited to Article 10 thereof.

4. NO RECOURSE AGAINST OTHERS. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Notes, any Note Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

5. ONTARIO LAW TO GOVERN. This Supplemental Indenture will be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable in Ontario.

6. COUNTERPARTS. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

7. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

8. THE TRUSTEE. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and attested, all as of the date first above written.

Dated: _______________, 20___

[GUARANTEEING SUBSIDIARY]

By: ______________________________
Name:
Title:

[COMPANY]

By: ______________________________
Name:
Title:

[EXISTING GUARANTORS]

By: ______________________________
Name:
Title:

[TRUSTEE],
as Trustee

By: ______________________________
Authorized Signatory

EXHIBIT D

FORM OF LEASE/LICENSE CERTIFICATE

To: Equity Financial Trust Company, as Collateral Agent (the "Collateral Agent")

From: [Holdings, the Company or DAVE Leasing, as applicable] (the "Obligor")

Dated: [ ]

Dear Sirs:

1. This is a Lease/License Certificate. This Lease/License Certificate is provided by [ ], the [*senior officer*] of the Obligor, in such capacity and not in [his/her] personal capacity.

2. We confirm that, for the fiscal year to which this Lease/License Certificate relates:

   a) the name, address and telephone number of the landlord or licensor (as the case may be) under each Lease or License entered into during such fiscal year is [•] [*NTD: Please specify*];

   b) each Lease or License entered into during such fiscal year contains an acknowledgement from the landlord or the licensor (as the case may be) that none of the equipment of the Obligor located on the premises to which such Lease or License relates is a fixture [except for •] [*NTD: If applicable, please list any Lease or License here*]; and

   c) each Lease or License entered into during such fiscal year contains, or does not contain (as the case may be) (i) change of control provisions [*yes/no*] [*NTD: Circle as appropriate*], (ii) provisions restricting the transfer of rights by the lessee or licensee [*yes/no*] [*NTD: Circle as appropriate*] or (iii) similar provisions [*yes/no*] [*NTD: Circle as appropriate*].

Signed ________________________

[senior officer]

B

This is Exhibit “B”
referred to in the affidavit of
JAMES RILEY
Sworn before me,
this 9th day of October, 2013

David Ullmann

A Commissioner, etc.

No securities regulatory authority has reviewed this offering memorandum or expressed an opinion about these securities. These securities have not been and will not be qualified for distribution to the public under the securities laws of any province or territory of Canada. These securities may not be offered or sold in Canada, directly or indirectly, other than pursuant to applicable private placement exemptions.

The securities offered under this offering memorandum have not been and will not be registered under the United States Securities Act of 1933, as amended (the "U.S. Securities Act"), or any state securities laws and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. Persons (as defined in Regulation S under the U.S. Securities Act), unless registered under the U.S. Securities Act and applicable state securities laws or an exemption from such registration is available.

CONFIDENTIAL OFFERING MEMORANDUM **APRIL 19, 2011**

mobilicity™

$185,000,000
9.5% First Lien Senior Secured Notes due 2018
and
$20,000,000
15.0% Senior Unsecured Debentures due September 25, 2018

Data & Audio-Visual Enterprises Wireless Inc. ("**Mobilicity**" or the "**Company**") is offering (the "**Offering**"), and Data & Audio-Visual Enterprises Holdings Inc. ("**Holdings**") and Data & Audio-Visual Enterprises Leasing Inc. ("**Leaseco**") are guaranteeing, $185,000,000 aggregate principal amount of 9.5% First Lien Senior Secured Notes (the "**Notes**"). The Notes will mature on the seven year anniversary of the date of issuance thereof (the "**Notes Issue Date**"). The Company will pay fixed interest on the Notes on September 30 and March 31 of each year, commencing on September 30, 2011. The Company may, at its option, redeem all or part of the Notes at any time prior to the third anniversary of the Notes Issue Date, at a make-whole price, and on or after the third anniversary of the Notes Issue Date, at fixed redemption prices. In addition, prior to the third anniversary of the Notes Issue Date, the Company may, at its option, redeem up to an aggregate of 35% of the aggregate principal amount of the Notes with the proceeds of certain equity offerings by the Company. If the Company undergoes a change of control, it may be required to offer to purchase the Notes.

The Notes will be first ranking senior secured obligations of the Company and its subsidiaries and will rank *pari passu* with all of the Company's other present and future senior secured indebtedness and senior to all future senior unsecured indebtedness. The Notes will be unconditionally guaranteed as to the payment of principal and interest, on a secured basis, by each existing and future, direct and indirect, subsidiary of the Company and Holdings. The guarantees of the Notes will be first lien senior secured obligations of each guarantor and will rank *pari passu* with all of the other present and future senior secured indebtedness of the guarantors and senior to all future senior unsecured indebtedness of the guarantors. See "Description of the Notes".

Holdings is also offering (the "**Additional Offering**") an additional $20,000,000 aggregate principal amount (the "**Additional Debentures**") of the Series 2009 15.0% Senior Unsecured Debentures due September 25, 2018 (the "**2009 Debentures**", together with the Additional Debentures, the "**Debentures**") currently outstanding. Holdings will pay fixed interest on the Additional Debentures on June 30 and December 31 of each year, commencing on June 30, 2011. Holdings may, at its option, redeem all or part of the Additional Debentures at any time prior to the date that is the 18 month anniversary of the date of issuance of the 2009 Debentures (the "**Debenture Issue Date**"), at a redemption price equal to 107.5% of the payment amount of the Additional Debentures to be redeemed plus accrued and unpaid interest thereon and on or after the 18 month anniversary of the Debenture Issue Date, at the payment amount plus accrued and unpaid interest. If Holdings undergoes a change of control, it may be required to offer to purchase the Additional Debentures.

The Additional Debentures will be a direct unsecured obligation of Holdings, and are subordinated in right of payment, to the extent and in the manner provided in the amended and restated trust indenture that will govern the Additional Debentures, to the prior payment of all senior secured indebtedness, whether outstanding at the date of the amended and restated trust indenture or thereafter created, incurred, assumed or guaranteed. The Additional Debentures will rank *pari passu* with each other series of debentures, trade creditors and the approximate $60,000,000 principal amount of indebtedness incurred by Holdings, together with any payment in kind and other accrued or capitalized interest in connection with the issuance of certain convertible debentures under the Quadrangle Facility (as defined in the section of this offering memorandum titled "Description of Other Indebtedness – Convertible Debentures"). The Debentures will rank senior to any other indebtedness which, by the terms of such other indebtedness, provides that it will be subordinated to the Debentures, including the approximately $35,000,000 principal amount available to Holdings under the Quadrangle Facility. See "Description of Other Indebtedness".

In connection with the issuance of the Additional Debentures, Holdings shall also issue up to 400,000 warrants, where four CW Warrants (the "**CW Warrants**") and 16 B Warrants (the "**B Warrants**" together with the CW Warrants, the "**Warrants**") will be delivered to debentureholders for every $1,000 of principal amount of Additional Debentures subscribed for by such debentureholder. Each CW Warrant shall entitle the holder thereof to purchase one common share of Holdings ("**Common Share**") at a price of $12.00 per Common Share, and each B Warrant shall entitle the holder thereof to purchase one Class B share of Holdings ("**Class B Share**") at a price of $12.00 per Class B Share. See "Description of the Debentures".

The Notes and the Additional Debentures are being offered severally in Canada by National Bank Financial Inc. ("**National Bank**") and GMP Securities L.P. ("**GMP**") (collectively, the "**Underwriters**") acting as underwriters of the Company and Holdings. See "Plan of Distribution".

Investing in the Notes and the Additional Debentures involves significant risks. See "Risk Factors".

The information contained in this offering memorandum is confidential and is for the confidential use of only those persons to whom this offering memorandum is delivered in connection with the offering of the Notes and the Additional Debentures. By their acceptance of this offering memorandum, prospective investors agree that they will not transmit, reproduce or make available to anyone this offering memorandum or any information contained herein and that they will not use such information for any purpose other than for making an investment decision regarding the Notes and the Additional Debentures.

The Company and Holdings reserve the right to reject all or part of any offer to purchase Notes or Additional Debentures, respectively, for any reason or to allocate to any purchaser less than all of the Notes or Additional Debentures for which it has subscribed. Book-entry only certificates representing the Notes and the Additional Debentures will be issued in registered form only to CDS Clearing and Depository Services Inc. ("**CDS**") or its nominee and will be deposited with CDS on closing of this offering, which is expected to occur on or about May 2, 2011. A purchaser of Notes or Additional Debentures will receive only a customer confirmation from the registered dealer who is a CDS participant and from or through whom the Notes and the Additional Debentures are purchased. See "Description of the Notes" and "Description of the Debentures".

This offering memorandum should not be construed as containing investment, legal or tax advice to any particular purchaser of Notes or Additional Debentures. Investors should consult their own investment, legal, tax and other advisers regarding the financial, legal, tax and other aspects of any purchase of Notes or Additional Debentures. Prospective investors may rely only on the information contained in this offering memorandum in making a decision to invest and not on any other document or information (whether provided prior to or after the date hereof) Neither the Company, Holdings nor the Underwriters have authorized anyone to provide you with different information. If you receive any other information, you should not rely on it.

The transfer or resale of the Notes and Additional Debentures in Canada to, from, or for the benefit or account of any person resident in Canada will be subject to restrictions under applicable securities laws, and any resale of the Notes and Additional Debentures must be made in accordance with applicable securities laws. Neither the Company nor Holdings are reporting issuers in any jurisdiction, and as a result a holder of Notes or Additional Debentures may not trade the Notes or the Additional Debentures before the date that is four months and a day after the later of the date of distribution of the Notes and Additional Debentures and the date on which the Company or Holdings, as applicable, becomes a reporting issuer in any province or territory in Canada, unless a trade is permitted under securities laws. Therefore, the restricted period or hold period applicable to the Notes and Additional Debentures may never expire. See "Risk Factors".

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GLOSSARY

In this offering memorandum, unless the context otherwise requires, the following words and phrases have the meanings set forth below.

"**2009 Debentures**" means the $75,000,000 aggregate principal amount of Series 2009 15.0% Senior Unsecured Debentures due September 25, 2018;

"**Additional Debentures**" means the additional $20,000,000 aggregate principal amount of 2009 Debentures issued by Holdings;

"**Additional Offering**" means the offering of the Additional Debentures;

"**allowable capital loss**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**Amdocs**" means Amdocs Limited;

"**ARPU**" has the meaning ascribed to it in the section of this offering memorandum titled "Offering Memorandum Summary – Industry";

"**AT&T**" means AT&T Inc.;

"**AWS**" means advanced wireless services;

"**B Warrant**" means the B Warrants issued by Holdings which entitle the holder thereof to purchase one Class B share of Holdings at a price of $12.00 per Class B Share;

"**BCE**" means BCE Inc.;

"**CAGR**" has the meaning ascribed to it in the section of this offering memorandum titled "Industry Overview";

"**CCAA**" means the *Companies' Creditors Arrangement Act* (Canada);

"**CDC**" means the Centers for Disease Control and Prevention;

"**CDS**" means CDS Clearing and Depository Services Inc.;

"**churn**" means average monthly churn rate;

"**Class B Share**" means the Class B shares of Holdings;

"**Collateral Agent**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Notes";

"**Common Share**" means the common shares of Holdings;

"**Company**" means Data & Audio-Visual Enterprises Wireless Inc.;

"**Convertible Debentures**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of Other Indebtedness";

"**CPGA**" means cost per gross addition;

"**CRA**" means the Canada Revenue Agency;

"**Credit Facility**" means the ING Senior Credit Facility of the Company;

"**CRTC**" means the Canadian Radio-television and Telecommunications Commission;

"**CW Warrant**" means the CW Warrants issued by Holdings which entitle the holder thereof to purchase one Common Share of Holdings at a price of $12.00 per Common Share;

"**CWTA**" means the Canadian Wireless Telecommunications Association;

"**DAVE Investments**" means Data and Audio-Visual Enterprises Investments Inc.;

"**Debentures**" means, collectively, the 2009 Debentures and the Additional Debentures;

"**Debenture Issue Date**" means the date on which the 2009 Debentures were originally issued under the Indenture;

"**Debenture Trustee**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**EBITDA**" means operating loss before depreciation and amortization, share-based payments and capital taxes;

"**eMarketer**" means eMarketer Inc.;

"**Ericsson**" means Ericsson Telefonaktiebolaget LM;

"**First Lien Notes Indenture**" means the trust indenture under which the Notes will be issued, as described in the section of this offering memorandum titled "Description of the Notes";

"**Frost & Sullivan**" means Frost & Sullivan Limited;

"**GAAP**" means generally accepted accounting principles as set out in the Canadian Institute of Chartered Accountants Handbook – Accounting, at the relevant time applied on a consistent basis;

"**GMP**" means GMP Securities L.P.;

"**GTA**" means the Greater Toronto Area;

"**Holder**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**Holdings**" means Data & Audio-Visual Enterprises Holdings Inc.;

"**IFRS**" means the international financial reporting standards as published from time to time by the International Accounting Standards Board or any successor thereto;

"**Incumbents**" means, collectively, Rogers, BCE and Telus;

"**Indenture**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Ingram Micro**" means Ingram Micro Corporation;

"**Initial Debenture Interest Obligation**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Initial Debenture Interest Payment Date**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Initial Debenture Maturity Date**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Initial Debenture Payment Amount**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Initial Debenture Redeemed Interest Amount**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Issue Date**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**ITU**" means the International Telecommunication Union;

"**IPO Date**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**IPO Shares**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of the Debentures";

"**Leaseco**" means Data & Audio-Visual Enterprises Leasing Inc.;

"**MD&A**" means management's discussion and analysis;

"**Mobilicity**" means Data & Audio-Visual Enterprises Wireless Inc.;

"**MOU**" has the meaning ascribed to it in the section of this offering memorandum titled "Offering Memorandum Summary – Industry";

"**MVNOs**" means mobile virtual network operators;

"**National Bank**" means National Bank Financial Inc.;

"**Non-Resident Holder**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**Notes**" means the $185,000,000 aggregate principal amount of 9.5% First Lien Senior Secured Notes due 2018;

"**Notes Issue Date**" means the date on which the Notes are originally issued under the First Lien Note Indenture which is expected to be on or about May 2, 2011;

"**Obelysk**" means Obelysk Inc., which recently changed its name to PBI Enterprises Inc.;

"**OECD**" means the Organization for Economic Co-operation and Development;

"**OEM**" means original equipment manufacturer;

"**Offering**" means the offering of the Notes;

"**payment amount**" has the meaning ascribed to it in the Debentures;

"**PIK**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of Other Indebtedness";

"**POP**" means population;

"**PSTN**" has the meaning ascribed to it in the section of this offering memorandum titled "The Company";

"**Public Mobile**" has the meaning ascribed to it in the section of this offering memorandum titled "Offering Memorandum Summary – Overview of Competitive Landscape";

"**Quadrangle**" means QCP CW S.A.R.L.;

"**Quadrangle Facility**" has the meaning ascribed to it in the section of this offering memorandum titled "Description of Other Indebtedness – Convertible Debentures";

"**Quadrangle Group**" means Quadrangle and its affiliates;

"**RAN**" means radio access network;

"**Refinancing**" has the meaning ascribed to it in the section of this offering memorandum titled "The Refinancing";

"**Regulations**" means the Tax Act and the regulations thereunder;

"**Resident Holder**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**Rogers**" means Rogers Communications Inc.;

"**Sitel**" means Sitel Teleservices Canada Inc.;

"**smartphones**" means a mobile phone that offers more advanced computing ability and connectivity than a contemporary feature phone;

"**T-Mobile**" means T-Mobile USA Inc.;

"**Tax Act**" means the *Income Tax Act* (Canada);

"**Tax Proposals**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**taxable capital gain**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**Telus**" means Telus Communications Inc.;

"**UMTS/HSPA**" means a third generation mobile communication technology that is the successor to GSM;

"**UNCTAD**" means United Nations Conference on Trade and Development;

"**Underwriters**" means, collectively, National Bank and GMP;

"**Underwriting Agreement**" means the underwriting agreement to be entered into between the Company, Holdings and the Underwriters;

"**Verizon**" means Cellco Partnership d/b/a Verizon Wireless;

"**Wall Street Research**" means equity research estimates;

"**Warrants**" means, collectively, the CW Warrants and the B Warrants;

"**Warrant Share**" has the meaning ascribed to it in the section of this offering memorandum titled "Certain Canadian Federal Income Tax Considerations";

"**WIND®**" has meaning ascribed to it in the section of this offering memorandum titled "Offering Memorandum Summary – Overview of Competitive Landscape".

GENERAL MATTERS

Disclaimer

This offering memorandum constitutes an offering of the Notes and Additional Debentures described herein only in those jurisdictions in which and only to those persons to whom they may be lawfully offered for sale. This offering memorandum is not, and in no circumstances is it to be construed as, a prospectus, an advertisement, or a public offering of securities. This offering memorandum is submitted on a confidential basis for use by a limited number of qualified purchasers solely in connection with the consideration of the purchase of the Notes and Additional Debentures on a private placement basis. No persons other than the officers of the Company have been authorized to provide any information in connection with the offering of the Notes and the Additional Debentures or other than the information contained in this offering memorandum.

The information contained in this offering memorandum has been prepared by the Company and Holdings and there is no representation or warranty by any of the Underwriters as to the accuracy or completeness of the information set forth herein. Neither the delivery of this offering memorandum nor any sale made under the terms described herein shall imply that the information herein is correct as of any date after the date hereof.

In making an investment decision, prospective investors must rely on their own examination of the Company and Holdings and the terms of the offering, including the merits and risks involved. Prospective investors should not construe anything in this offering memorandum as legal, business or tax advice. Each prospective investor should consult its own advisers as needed to make its investment decision and to determine whether it is legally permitted to purchase the Notes under applicable laws.

Resale Restrictions

The Notes and Additional Debentures have not been and will not be qualified for distribution to the public under the securities laws of any province or territory of Canada. The Notes and Additional Debentures are being offered on a private placement basis in accordance with National Instrument 45-106 – *Prospectus and Registration Exemptions*.

The transfer or resale of the Notes and Additional Debentures in Canada to, from, or for the benefit or account of any person resident in Canada will be subject to restrictions under applicable securities laws, and any resale of the Notes and Additional Debentures must be made in accordance with applicable securities laws. Neither the Company nor Holdings are reporting issuers in any jurisdiction, and as a result a holder of Notes or Additional Debentures may not trade the Notes or the Additional Debentures before the date that is four months and a day after the later of the date of distribution of the Notes and Additional Debentures and the date on which the Company or Holdings, as applicable, becomes a reporting issuer in any province or territory in Canada, unless a trade is permitted under securities laws. Therefore, the restricted period or hold period applicable to the Notes and Additional Debentures may never expire. See "Risk Factors".

Applicable securities laws permit the resale of the Notes and Additional Debentures to "accredited investors" or other exempt purchasers or pursuant to exempt transactions. Purchasers are advised to seek legal advice before reselling Notes and Additional Debentures.

Neither the Notes nor the Additional Debentures have been nor will they be registered under the U.S. Securities Act or any state securities laws, and may not be offered, sold or delivered within the United States except in transactions exempt from the registration requirements of the U.S. Securities Act. Notes and Additional Debentures that are sold in the United States, or to, or for the account of, U.S. Persons will be restricted securities within the meaning of Rule 144 of the U.S. Securities Act and certificates representing any such securities will bear a legend to the effect that the securities represented thereby are not registered under the U.S. Securities Act and may only be offered or sold pursuant to certain exemptions from the registration requirements of the U.S. Securities Act.

The Additional Debentures contain foreign ownership restrictions which may limit the transfer or resale of the Additional Debentures. "See Description of the Debentures – Transfer Restrictions".

Representations of Purchasers

Each purchaser of Notes and Additional Debentures will be deemed to have made to the Company, to Holdings and to any Underwriters that sells Notes or Additional Debentures to such purchaser the representations and warranties set forth in the subscription agreement for such Notes and Additional Debentures.

Forward-Looking Statements

Certain statements contained in this offering memorandum are forward-looking statements. These statements relate to future events or the Company's and Holdings' future performance. All statements other than statements of historical fact may be forward-looking statements. Forward-looking statements are often, but not always, identified by words such as "seek", "anticipate", "plan", "continue", "estimate", "expect", "may", "will", "project", "predict", "potential", "targeting", "intend", "could", "might", "should", "believe" and similar expressions. These statements involve known and unknown risks, uncertainties and other factors that may cause actual results or events to differ materially from those anticipated in such forward-looking statements. Management believes that the expectations reflected in these forward-looking statements are reasonable, but no assurance can be given that these expectations will prove to be correct and such forward-looking statements should not be unduly relied upon. These statements speak only as of the date of this offering memorandum. Other than as required by applicable laws, the Company and Holdings do not intend, and do not assume any obligation, to update these forward-looking statements.

In particular, this offering memorandum contains forward-looking statements pertaining to the following:

industry trends;

the ability of the Company to provide unique service to its customers;

competitive advantages of the Company;

the ability of the Company to innovate;

the ability of the Company to meet client demands;

the ability of the Company to service its indebtedness;

the regulatory environment;

customers and customer relations;

vendor and third-party relations;

employee relations;

wireless networks and information technology; and

pro forma financial information.

Presentation of Financial Information

The Company's consolidated financial statements have been prepared in accordance with International Financial Reporting Standards ("**IFRS**") and the reporting currency is the Canadian dollar. In this offering memorandum, references to "$" and "dollars" are to Canadian dollars and references to "US$" and "U.S. dollars" are to United States dollars.

The Company uses certain financial measures that are not calculated in accordance with IFRS to assess the Company's financial performance, including ARPU, CPGA, churn, subscribers and EBITDA. The Company defines EBITDA for a period as operating loss before depreciation and amortization, share-based payments and capital taxes (for additional definitions see "Management's Discussion and Analysis – Key Operating Metrics"). The Company uses such non-IFRS financial measures because the Company believes that they are meaningful measures by which management and investors measure the Company's performance. The Company's method of calculating these non-IFRS financial measures may differ from the methods used by other issuers, and as a result the non-IFRS financial measures presented in this offering memorandum may not be comparable to other similarly titled measures used by other issuers.

Market and Industry Data

Market data and other statistical information used in this offering memorandum is based on independent industry publications, government publications, company filings, reports by market research firms or other published independent sources, including the Canadian Radio-television and Telecommunications Commission ("**CRTC**"), the Canadian Wireless Telecommunications Association ("**CWTA**"), eMarketer Inc. ("**eMarketer**"), Frost & Sullivan Limited ("**Frost & Sullivan**"), the International Telecommunication Union ("**ITU**"), the Organization for Economic Co-operation and Development ("**OECD**"), Centers for Disease Control and Prevention ("**CDC**"), equity research estimates ("**Wall Street Research**") and the United Nations Conference on Trade and Development ("**UNCTAD**"). Some data are also based on management's good faith estimates, which are derived from their review of internal data and information, as well as the independent sources listed above. Although management believes these sources are reliable, neither the Company nor Holdings have independently verified the information and cannot guarantee its accuracy and completeness. All references to T-Mobile USA Inc. ("**T-Mobile**") have been made prior to the proposed acquisition of T-Mobile by AT&T Inc. ("**AT&T**") announced on March 20, 2011.

Currency and Exchange Rate Data

Between the period of December 31, 2010 and April 1, 2011, the exchange rate for Canadian dollars traded between a range of $0.9946 and $0.9629, as provided by the Bank of Canada (the "**noon buying rate**"). For the purposes of this offering memorandum, we have assumed an exchange rate of parity.

OFFERING MEMORANDUM SUMMARY

This summary is qualified by, and should be read in conjunction with, the detailed information contained elsewhere in this offering memorandum. Unless otherwise indicated, capitalized terms used but not defined herein have the meanings specified in the "Glossary" section of this offering memorandum.

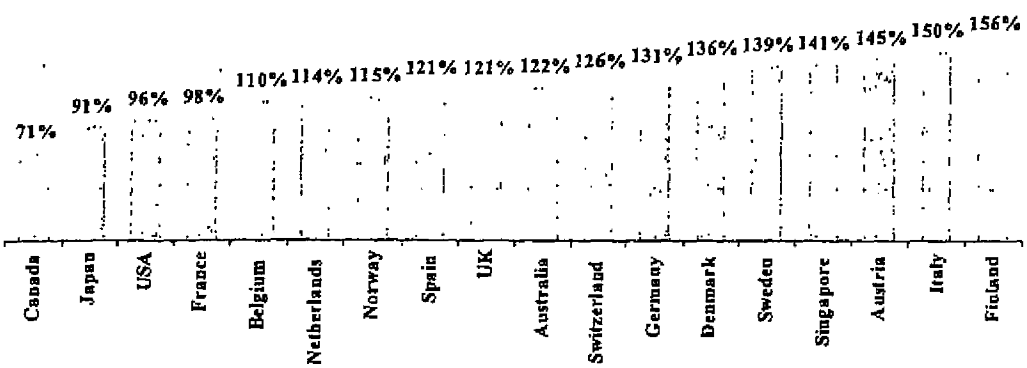
INDUSTRY

The wireless communications industry in Canada is currently comprised of basic voice, long distance, paging, data and terminal services. Wireless services are estimated to be available to 99% of Canada's 33.9 million population. There are approximately 24 million wireless subscribers in Canada, representing a wireless penetration rate of 71%.

The Canadian wireless market is under-penetrated compared to other developed nations. While wireless services have been offered in Canada since the early 1980s, wireless penetration lags that of virtually all developed country peers, as shown in Exhibit 1 below. In a number of European and Asian countries, wireless penetration already exceeds 100% (reflecting consumers who have on average more than one mobile device), highlighting the potential for market penetration expansion in Canada.

EXHIBIT 1

Q3 2010 Mobile Penetration Rates by Country

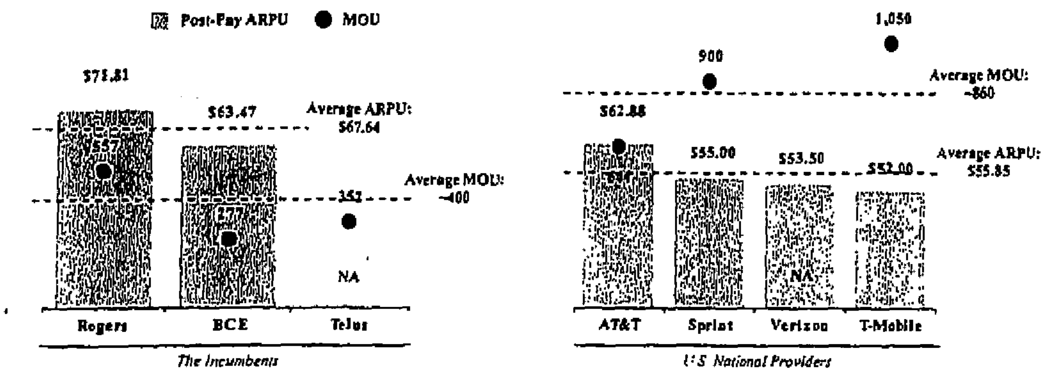


Source: Wall Street Research

A key factor contributing to Canada's low wireless penetration is the elevated pricing for wireless services, which has kept price-sensitive customers out of the market. High prices in Canada are largely the result of a lack of competition, as the Canadian wireless market is dominated by three major players: Rogers Communications Inc. ("**Rogers**"), BCE Inc. ("**BCE**") and Telus Communications Inc. ("**Telus**") (collectively the "**Incumbents**") that combined control approximately 96% of the market.

Canadian wireless subscribers pay more for wireless services than subscribers in virtually every other developed country. Post-pay average revenue per user per month ("**ARPU**") and average minutes-of-use per month ("**MOU**") statistics for the Incumbents vs. U.S. national wireless carriers (AT&T, Sprint Nextel Corp., Cellco Partnership d/b/a Verizon Wireless ("**Verizon**") and T-Mobile) highlight the price differential for wireless subscribers in Canada as compared to the U.S. Average post-pay ARPU for Q4 2010 was C$67.64 for Rogers and BCE vs. US$55.85 for U.S. national providers. Average MOU is also substantially higher for U.S. national wireless carriers (~860) vs. Incumbents (~400), as highlighted in Exhibit 2 below (U.S. National Providers ARPU figures presented in U.S. dollars). Given the higher ARPU and low MOU in Canada, the Incumbents generate higher ARPU per MOU from their subscribers.

EXHIBIT 2
Post-Pay ARPU & MOU – Q4 2010



Source. public filings

Given the high price of Canadian post-pay offerings, an attractive opportunity exists to provide a value–based wireless alternative. The Incumbents' legacy networks, infrastructure costs and pricing plans limit their ability to compete at value–based price points, thereby providing an opportunity for new entrants who have constructed networks designed to accommodate value-based subscribers and maximize operational efficiency.

THE COMPANY

Mobilicity is a Canadian wireless carrier that offers simple, affordable, flat rate, unlimited services that target value-conscious consumers in many of Canada's largest, English speaking urban markets. The Company believes its combination of a cutting-edge network, diverse selection of mobile devices, value based pricing, broad distribution footprint, quality customer service, and consumer friendly brand creates a differentiated strategy and competitive position relative to other Canadian wireless carriers. As of April 2011, the Company had launched services in the Greater Toronto Area (the "**GTA**"), Metro Vancouver, Ottawa, and Edmonton and plans to launch services in Calgary in late April 2011. Mobilicity provides nationwide coverage to its subscribers through a roaming agreement.

Mobilicity has deployed a homogenous UMTS/HSPA network compatible with global standards that delivers high quality and reliable voice and high-speed data services on a range of brand name smartphones, data cards and other devices. Mobilicity believes that its participation in the global UMTS/HSPA ecosystem, focus on large English speaking urban markets, and philosophy of outsourcing key operating functions to industry leading suppliers provide it with a low cost business model that efficiently utilizes capital.

History

Mobilicity was founded in 2007 and in 2008, Obelysk Inc. (controlled by John Bitove), a diversified Canadian private equity firm, formed an investment partnership with Quadrangle Group, a U.S. based private equity firm that focuses on media and telecom investments, to collectively bid for advanced wireless services ("**AWS**") spectrum in the 2008 Canadian spectrum auction and subsequently establish a Canadian wireless carrier.

In August 2008, the Company acquired 10 licenses, set forth in Exhibit 3, at a cost of C$243 million for spectrum holdings covering approximately 16.1 million Canadians, representing approximately half of Canada's population and including Canada's largest and densest English speaking urban markets.

EXHIBIT 3

	Block	Tier	Price (C$MM)	MHz	License POPs	C$ / MHz / POP
Eastern Markets						
S. Ontario (Toronto)	C	2	$131.0	10	8,811,117	$1.49
Guelph/Kitchener	D	3	$2.6	20	607,035	$0.43
Niagara	D	3	$1.4	20	354,971	$0.39
Windsor	D	3	$1.6	20	376,213	$0.42
E. Ontario (Ottawa)	C	2	$30.4	10	2,122,177	$1.43
Subtotal – Eastern Markets	**C/D**	**2/3**	**$167.0**	**10/20**	**10,933,294**	**$1.36**
Western Markets						
Vancouver	D	3	$56.4	10	2,310,047	$2.44
Victoria	D	3	$1.8	10	389,247	$0.45
Subtotal – B.C. Markets	D	3	$58.2	10	2,699,294	$2.15
Calgary	D	3	$8.4	10	1,091,673	$0.77
Edmonton	D	3	$9.0	10	1,199,124	$0.75

Low Cost, Capital Efficient Business Model

Mobilicity has outsourced many of its operations to industry leading third party suppliers to provide cost certainty, reduce execution risk and, in some cases, more directly link costs to subscriber acquisition. Operational cost overruns and network/system performance levels related to those contracts are generally the responsibility of these third party service providers.

The implementation of Mobilicity's wireless network is coordinated and performed primarily by Ericsson Telefonaktiebolaget LM ("**Ericsson**") and its sub-contractors. Ericsson has built a 3.5G UMTS/HSPA enabled network that provides contemporary features and high quality voice and data services. Ericsson was responsible for the build and launch of the network and has also been retained to monitor and maintain the network to ensure that Mobilicity customers continue to receive reliable service. Billing and operational support systems are maintained by Amdocs Limited ("**Amdocs**"), which provides a real-time billing and rating system that includes activation, provisioning, rating and charging.

As a result of its focus on a limited number of large urban markets, its network deployment strategy and its outsourcing approach, Mobilicity believes its business model will, over the long term, have lower capital expenditures per subscriber and more cost effective sales and marketing initiatives. As a result, Mobilicity believes its model may enable it to attain significant operating leverage and capital efficiency in the future.

Handsets, Distribution and Subscribers

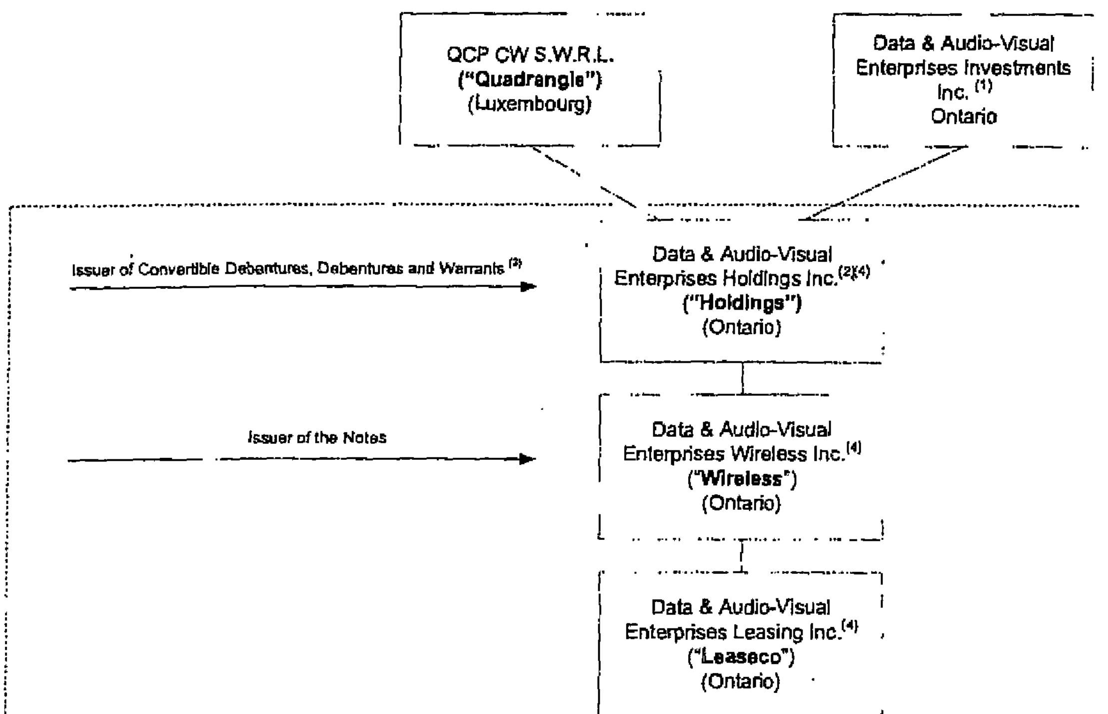
Mobilicity offers a diverse selection of brand name handsets at reasonable prices, including smartphones, which are becoming a key focal point of the Company's offering. Mobilicity believes that its participation in the global UMTS/HSPA ecosystem with a network architecture consistent with that of T-Mobile and certain other AWS spectrum owners provides it with access to a greater array of handsets at a lower price than would be available were it using non-standard spectrum or CDMA technology.

Mobilicity has established an extensive distribution network in each of its four launched markets, currently consisting of more than 700 points of distribution. Through direct and indirect partnerships, the Company utilizes several distribution channels and platforms for selling its handsets and service plans, and Mobilicity believes that its extensive distribution footprint is a competitive advantage in attracting and supporting its customer base.

Mobilicity has a diverse customer base that subscribes to Mobilicity's services for several reasons. Mobilicity believes that its value based pricing, simple pricing plans, nationwide coverage through roaming agreements and unlimited features, including its array of unlimited voice, long distance, testing and data packages, appeals broadly to mainstream Canadians in its markets. Additionally, the Company has focused on underserved market segments, including lower income and ethnic communities, through its distribution footprint and calling plans that specifically target these communities. As a result, Mobilicity believes that customers subscribe to Mobilicity's services as a primary wireless service, a wireless alternative to incumbent wireless providers, a secondary wireless phone, a replacement for traditional land-line service, and as an alternative for home internet access. As at December 31, 2010, Mobility had approximately 84,000 subscribers.

Corporate Structure

The following organizational chart shows the Company's corporate structure as of the date of this offering memorandum and each entity's jurisdiction of incorporation, and assumes the completion of the Offering, the Additional Offering and re-payment of the ING Senior Credit Facility (the "**Credit Facility**"). The Notes will be issued by the Company and will be unconditionally guaranteed as to the payment of principal and interest, on a secured basis, by each existing and future, direct and indirect, subsidiary of the Company and Holdings. The Additional Debentures will be issued by Holdings. See "Description of Other Indebtedness" for a full description of the indebtedness of the Company and Holdings.



(1) Data & Audio-Visual Enterprises Investments Inc. is controlled by an entity affiliated with Obelysk. Obelysk is controlled by John Bitove.
(2) This chart does not display the common shares of Holdings or Wireless owned by management as part of their co-investment arrangements.
(3) Holdings issues certain convertible debentures pursuant to the Quadrangle Facility. See "Description of Other Indebtedness – Convertible Debentures".
(4) Guarantors under the Notes.

OVERVIEW OF COMPETITIVE LANDSCAPE

Competition for subscribers among wireless providers is based upon branding and marketing, network services and system features, the reception quality of wireless networks, customer service levels and practices, network capacity, handset selection and functionality, and service pricing. Strong competition in the Canadian wireless market is expected to prevail in the near-term as new entrants compete for market share with each other and the Incumbents, who offer nation-wide full-service plans as well as low cost options through their flanker brands and mobile virtual network operators ("**MVNOs**").

Incumbent Brands
The Incumbents provide wireless voice and data communications products and services to residential and business customers across Canada. Wireless services are offered over technologically advanced national wireless networks, and are available to virtually all of the Canadian population.

Incumbent Flanker Brands
As a result of the 2008 AWS auction and the increased competition from value-based wireless service offerings by the new entrants, the Incumbents have launched a series of "flanker brands" (e.g., Chatr™, Solo™, Koodo mobile™ and Clearnet™) in an attempt to compete with the new entrants. Some of these flanker brands offer no contract, unlimited plans that are comparable to new entrant offerings.

MVNOs
MVNO operators resell the services of the Incumbents under their own established brands, such as Petro-Canada Mobility™, Speakout™ Wireless (7-Eleven®), PC Mobile (a division of Loblaws Inc.), Primus Telecommunications Canada Inc. and Sears Connect®.

New Entrants
Two new market entrants, Globalive Wireless Management Corp. ("**WIND®**") and Public Mobile Inc. ("**Public Mobile**"), have launched services on their own networks in the regions in which Mobilicity operates and each offer "unlimited", contract-free, pay-in-advance wireless services in Canada. These new entrants are planning to serve consumers that are seeking high quality, pay-in-advance, value-based wireless services. Both value carriers do not have penalizing contract termination policies like the Incumbents, who often have three-year lock-ups with customers.

Mobilicity and WIND® have emerged as value providers fighting for market share in the same Canadian urban regions. In addition, Public Mobile has launched a voice-only, value-based service in Toronto and Montreal. It is Mobilicity's goal to differentiate itself from other low-cost carriers through simple, customer friendly service plans, enhanced network coverage and features, handset selection and quality of service.

THE REFINANCING

The offering of Notes and the Additional Debentures is part of a larger refinancing plan (the "**Refinancing**") to revise the Company's capital structure and provide it with greater flexibility to execute on strategic initiatives, including broadening its target market and enhancing the data capabilities of its network. The Refinancing includes: i) the issuance of the Notes and Additional Debentures, (ii) the repayment of the Credit Facility, (iii) certain modifications of the 2009 Debentures, (iv) certain modifications to the Quadrangle Facility and its extension to December 31, 2013, and (v) the payment of fees and expenses related to these transactions. See "Use of Proceeds".

USE OF PROCEEDS

The gross proceeds of the Offering and the Additional Offering will be $185 million and $20 million, respectively. The net proceeds of the Additional Offering will be contributed to the Company by Holdings. Approximately $71 million of the net proceeds will be used by the Company to repay the outstanding amount on the Credit Facility and pay additional costs associated with terminating the Credit Facility, and the balance will be added to the working capital of the Company and will be used for capital expenditures and general corporate purposes. The capital expenditures are primarily related to network deployment, and are intended to ensure that the markets where the Company has unlimited services (the GTA, Metro Vancouver, Edmonton, Ottawa, and expected in late April 2011, Calgary) have both sufficient coverage as well as capacity as the subscriber base grows. Please refer to the section entitled "Capitalization" for a further understanding of the capital structure of the Company and Holdings.

The following table sets out the estimated sources and uses of the proceeds from the Offering and the Additional Offering (assuming debt as of December 31, 2010). Actual amounts may vary from estimated amounts depending on several factors, including the amount of debt outstanding and the actual interest accrued thereon between December 31, 2010 and the closing date of the Offering and the Additional Offering, additional amounts drawn from December 31, 2010 to closing and changes in the fees and expenses incurred in connection with the Offering and the Additional Offering.

Sources	($ millions)	Uses	($ millions)
Notes	$185.0	Repayment of the Credit Facility[1]	$ 69.7
		Fees for terminating the Credit Facility	1.2
Additional Debentures	20.0	Transaction fees and expenses[2]	8.0
		Capital expenditures and general corporate purposes	126.1
Total Sources	$205.0	Total Uses	$205.0

[1]Reflects the drawn amount on the Credit Facility, plus accrued interest, as at December 31, 2010. Approximately $5 million was drawn on the Credit Facility between January 1, 2011 and March 31, 2011.
[2]Includes Underwriters' fees and other costs associated with the Offering and the Additional Offering payable by the Company and Holdings.

SELECTED HISTORICAL FINANCIAL INFORMATION

Data & Audio-Visual Enterprises Holdings Inc. Consolidated

($ in millions; except selected operating metrics)	For the Year Ended December 31st 2010	2009
Summary Financial Data		
Revenue	$9.2	--
EBITDA[1]	($66.5)	($13.0)
Operating Loss	($74.2)	($14.2)
Net Loss	($96.0)	($15.8)
Cash Flow Data		
Amortization	$5.7	$0.0
Capital Expenditures[2]	$66.4	$21.2
Selected Operating Metrics[1]		
ARPU	$32.66	NM
Churn	4.0%	NM
Subscribers (000s)	84	NM
CPGA	$407	NM

($ in millions)	Actual As Of December 31st 2010	2009
Selected Balance Sheet Data		
Intangible Assets[3]	$247.5	$246.9
Property Plant & Equipment	$84.5	$21.4

(1) Holdings uses certain non-IFRS financial measures to assess its financial performance, including ARPU, churn, CPGA, subscribers and EBITDA (see "Management's Discussion and Analysis – Key Operating Metrics"). Holdings uses such non-IFRS financial measures because Holdings believes that they are meaningful measures by which management and investors measure Holdings' performance. Holdings' method of calculating these non-IFRS financial measures may differ from the methods used by other issuers, and as a result the non-IFRS financial measures presented in this offering memorandum may not be comparable to other similarly titled measures used by other issuers.

(2) Includes capital expenditures on Property, Plant and Equipment, and Intangible Assets.

(3) Intangible assets represents the net book value of the Company's spectrum assets.

The Offering

Issuer	Data & Audio-Visual Enterprises Wireless Inc.
Securities Offered	9.5% First Lien Senior Secured Notes due 2018
Principal Amount	$185,000,000 of Notes
Issue Price	Par
Interest	The Notes will accrue interest from the date of issuance at the rate of 9.5% per year. Interest on the Notes will be payable semi-annually in arrears in equal installments on September 30 and March 31, commencing on September 30, 2011.
Maturity Date	Upon the seven year anniversary of the Notes Issue Date.
Ranking	The Notes will be first ranking senior secured obligations of the Company and its subsidiaries and Holdings and will rank equally and ratably with all of the Company's existing and future senior secured indebtedness and senior in right of payment to any and all other existing and future unsecured obligations.
Guarantees	The Notes will be fully and unconditionally guaranteed as to the payment of principal and interest, on a secured basis, by each existing and future, direct and indirect, subsidiary of the Company and Holdings.
Optional Redemption	The Company may, at its option, redeem all or part of the Notes prior to the third anniversary of the Notes Issue Date at the make-whole price which is equal to the sum of (i) 100% of the principal amount of the Notes to be redeemed, *plus* (ii) the greater of (x) the Applicable Premium as of the redemption date and (y) 1%, plus, in each case, accrued and unpaid interest to and including the redemption date. In addition, prior to the third anniversary of the Issue Date, the Company may on any one or more occasions redeem up to an aggregate of 35% of the aggregate principal amount of the Notes with the proceeds of certain equity offerings or contributions at a redemption price of 109.5% of the principal, plus accrued and unpaid interest to the redemption date. The Company may redeem all or part of the Notes at any time on or after the third anniversary of the Notes Issue Date at redemption prices set forth under "Description of the Notes – Optional Redemption," plus accrued and unpaid interest to the redemption date.
Change of Control	Upon a Change of Control, each holder of Notes will have the right to require the Company to purchase all or a portion of its Notes at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest.
Covenants	The indenture governing the Notes contains covenants that, among other things, limit the ability of the Company, its subsidiaries and Holdings to: • incur or guarantee additional indebtedness; • make certain restricted payments (including a restriction on dividends, restriction on cash interest payments to certain subordinated notes and redemption of shares and certain investments); • incur liens on assets; • sell, transfer or otherwise convey certain assets; • consolidate, merge or amalgamate or sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and other subsidiaries subject to compliance with the change of control provisions described in the section titled "Description of the Notes"; • enter into other lines of business; and • enter into certain transactions with affiliates.

Reporting	The Company shall provide to the holders of the Notes: (a) within 90 days after the end of each fiscal year, annual consolidated audited financial statements (including MD&A); and (b) within 60 days after the end of each of the first three fiscal quarters of each fiscal year, unaudited consolidated interim quarterly financial statements (including MD&A).

The Additional Offering

Issuer	Data & Audio-Visual Enterprises Holdings Inc.
Securities Offered	15.0% Senior Unsecured Debentures due September 25, 2018
Principal Amount	$20,000,000 of Additional Debentures
Issue Price	Par
Interest	The Additional Debentures will accrue interest from the date of issuance at the rate of 15.0% per year. Interest on the Notes will be payable semi-annually in arrears in equal installments on June 30 and December 31, commencing on June 30, 2011.
Maturity Date	September 25, 2018.
Ranking	The Additional Debentures will rank *pari passu* with each other series of debentures and senior to any other indebtedness which, by the terms of such other indebtedness, provides that it will be subordinated to the Debentures, including the approximately $35,000,000 principal amount currently available to Holdings under the Quadrangle Facility. See "Description of the Debentures – Ranking and Subordination".
Guarantees	The Additional Debentures will be a direct unsecured obligation of Holdings.
Optional Redemption	Holdings may, at its option, redeem all or part of the Additional Debentures at any time prior to the date that is 18 months following the Debenture Issue Date, at a redemption price equal to 107.5% of the principal amount of the Additional Debentures to be redeemed plus accrued and unpaid interest thereon from and after the date that is the date that is 18 months following the Debenture Issue Date, at the payment amount plus accrued and unpaid interest. See "Description of the Debentures".
Change of Control	Upon a Change of Control, each holder of Additional Debentures will have the right to require Holdings to purchase all or a portion of its Additional Debentures at a purchase price equal to 101% of the principal amount thereof plus accrued and unpaid interest.
Warrants	Holdings shall also issue up to 400,000 Warrants, where four CW Warrants and 16 B Warrants will be delivered to debentureholders for every $1,000 of principal amount of Additional Debentures held by such debentureholder. Each CW Warrant shall entitle the holder thereof to purchase one Common Share of the Company at a price of $12.00 per Common Share, and each B Warrant shall entitle the holder thereof to purchase one Class B Share at a price of $12.00 per Class B Share. Additional warrants may be issued by Holdings in certain circumstances. See "Description of the Debentures – Warrants".

General

Transfer Restrictions

The transfer or resale of the Notes and the Additional Debentures in Canada to, from or for the benefit or account of any person resident in Canada will be subject to restrictions under applicable securities laws, and any resale of the Notes or the Additional Debentures must be made in accordance with applicable securities laws. The Additional Debentures contain foreign ownership restrictions which may limit the transfer or resale of the Additional Debentures. "See Description of the Debentures – Transfer Restrictions".

Use of Proceeds

The gross proceeds of the Offering and the Additional Offering will be $185 million and $20 million, respectively. The net proceeds of the Additional Offering will be contributed to the Company by Holdings. Approximately $71 million of the net proceeds will be used by the Company to repay the outstanding amount on the Credit Facility and pay additional costs associated with terminating the Credit Facility, and the balance will be added to the working capital of the Company and will be used for capital expenditures and general corporate purposes. The capital expenditures are primarily related to network deployment, and are intended to ensure that the markets where the Company has unlimited services (the GTA, Metro Vancouver, Edmonton, Ottawa, and expected in late April 2011, Calgary) have both sufficient coverage as well as capacity as the subscriber base grows. See "Use of Proceeds".

Risk Factors

There are risks associated with an investment in the Notes and the Additional Debentures. Prospective purchasers should consult their own professional advisers to assess the income tax, legal and other aspects of an investment in the Notes and the Additional Debentures. See "Risk Factors".

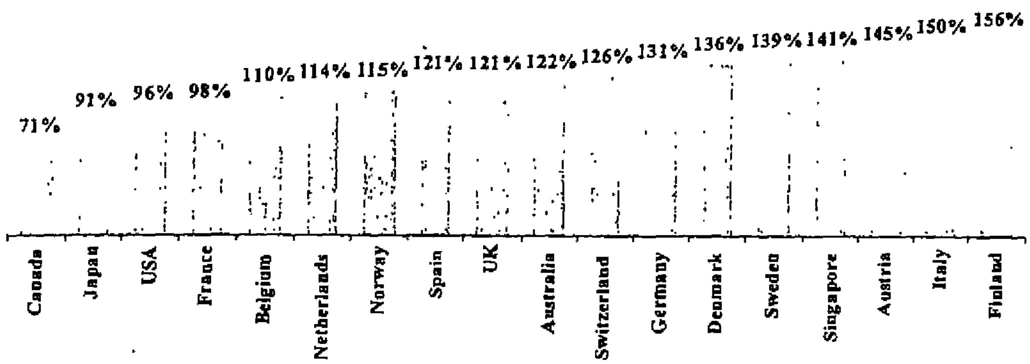
INDUSTRY OVERVIEW

The wireless communications industry in Canada is currently comprised of basic voice, long distance, paging, data and terminal services. Canada's wireless industry had revenues in excess of $16 billion in 2009, which represents a cumulative annual growth rate ("**CAGR**") of 11.3% from 2005-2009.

Wireless services are estimated to be available to 99% of Canada's 33.9 million population. There are approximately 24 million wireless subscribers in Canada representing a wireless penetration rate of 71%.

The Canadian wireless market is under-penetrated compared to other developed nations. While wireless services have been offered in Canada since the early 1980s, wireless penetration lags that of virtually all developed country peers as shown in Exhibit 4 below. In a number of European and Asian countries, wireless penetration already exceeds 100% (reflecting consumers who have on average more than one mobile device), highlighting the potential for market penetration expansion in Canada.

EXHIBIT 4
Q3 2010 Mobile Penetration Rates by Country



Source: Wall Street Research

Exhibit 5 below highlights the wireless penetration levels in Canada vs. the U.S. Currently, Canadian wireless penetration is where U.S. penetration was approximately four years ago, and is approximately 20% below where U.S. levels are today. If Canada's wireless penetration were to be the same as that in the United States (i.e., 93% at the end of 2009) it would represent an additional 7.5 million wireless subscribers in Canada.

EXHIBIT 5

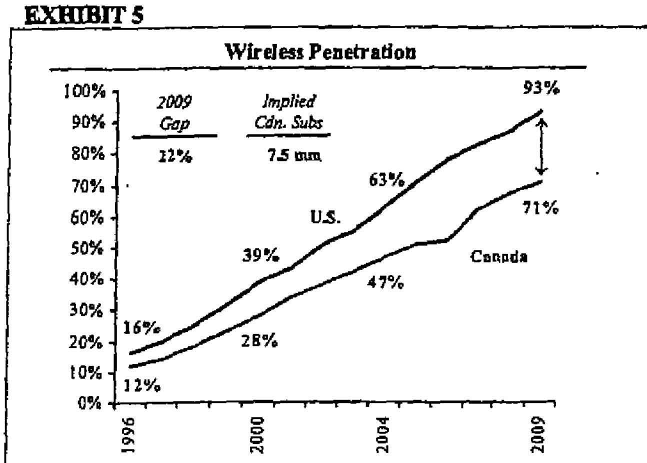
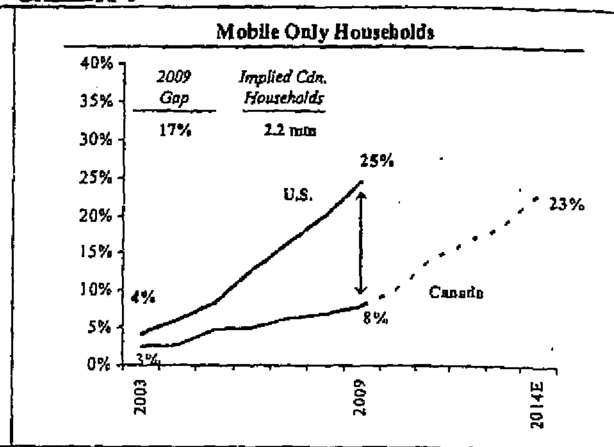


EXHIBIT 6



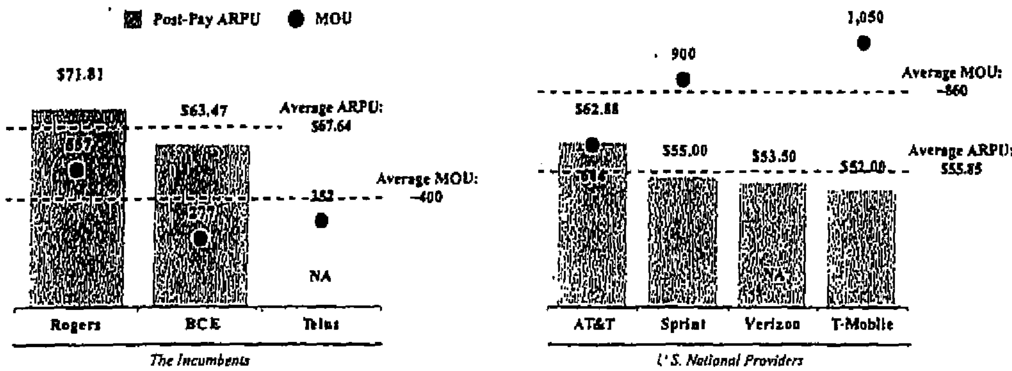
Sources: eMarketer (Frost & Sullivan; UNCTAD; ITU); CWTA; OECD; CRTC; CDC.

The under-penetration in the Canadian market compared to the U.S. is due to a number of factors, including the relatively higher cost of mobile services and limited number of wireless service providers. Additionally, the number of "mobile-only households" (i.e., households that do not have a landline connection and rely solely on mobile devices) are smaller in Canada relative to the U.S. In 2009, the CRTC estimated 8% of Canadian households to be mobile-only, compared to 25% in the U.S., as referenced in Exhibit 6 above. If the mobile-only household penetration in Canada reached 25%, as in the U.S., it would result in an additional 2.2 million mobile-only households.

A key factor contributing to Canada's low wireless penetration is the elevated pricing for wireless services, which has kept price-sensitive customers out of the market. High prices in Canada are largely the result of a lack of competition, as the Canadian wireless market is dominated by three major players: Rogers, BCE and Telus, that combined control approximately 96% of the market.

Canadian wireless subscribers pay more for wireless services than subscribers in virtually every other developed country. Post-pay ARPU and MOU statistics for the Incumbents vs. U.S. national wireless carriers (AT&T, Sprint Nextel Corp., Verizon and T-Mobile) highlight the price differential for wireless subscribers in Canada as compared to the U.S. Average post-pay ARPU for Q4 2010 was C$67.64 for Rogers and BCE vs. US$55.85 for U.S. national providers. Average MOU is also substantially higher for U.S. national wireless carriers (~860) vs. Incumbents (~400), as highlighted in Exhibit 2 below (U.S. National Providers ARPU figures presented in U.S. dollars). Given the higher ARPU and low MOU in Canada, the Incumbents generate higher ARPU per MOU from their subscribers.

EXHIBIT 7
Post-Pay ARPU & MOU – Q4 2010



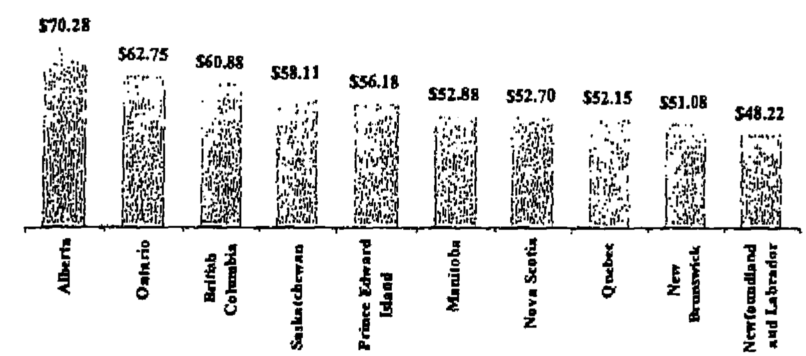
Source: public filings

Given the high price of Canadian post-pay offerings, an attractive opportunity exists to provide a value-based wireless alternative. The Incumbents' legacy networks, infrastructure costs and pricing plans limit their ability to compete at value-based price points, thereby providing an opportunity for new entrants who have constructed networks designed to accommodate value-based subscribers and maximize operational efficiency.

In addition to wireless ARPU differentials amongst Canadian service providers, ARPU also varies significantly across the various provinces of Canada, as shown in Exhibit 8 below. For example, ARPU in Alberta, the highest in Canada, is 46% higher than Newfoundland and Labrador, the lowest province. Mobilicity strategically purchased spectrum and launched services in the major metropolitan cities in Alberta, Ontario and British Columbia, which represent the most concentrated populations in English speaking Canada and are the three highest ARPU generating provinces.

EXHIBIT 8

ARPU by Province



Source: CRTC 2009 Communications and Monitoring Report.

Advanced Wireless Services (AWS) and Other Frequency Bands Auction

In 2008, Industry Canada conducted an auction for AWS (1700 and 2100 MHz) and other frequency bands. As part of this auction, 40 MHz of AWS was set aside to encourage new participants to enter the Canadian wireless market, thereby increasing competition and providing consumers with new alternative wireless service providers. In addition to allocating spectrum for new entrants, Industry Canada established the following rules and mechanisms to ensure that incumbents do not impede the progress of wireless service launches by new entrants:

(1) Mandatory Roaming

Industry Canada requires that, where technically feasible, cellular, PCS and AWS licensees offer automatic digital roaming on their networks:

- To all cellular, PCS and AWS licensees outside of their licensed area, for at least the 10-year term of AWS licenses;
- To all new entrants, in their licensed areas for a period of five years commencing with the date of issuance of their license; and
- To national new entrants who have substantially met the five-year roll-out requirements outlined in their license, as determined by Industry Canada, for an additional five years.

Roaming arrangements must be offered wherever technically feasible and negotiated expeditiously and in good faith.

(2) Tower/Site Sharing

Industry Canada requires Incumbents to share towers/sites with new entrants. These tower-sharing agreements apply to carriers in all bands.

(3) License Transfers

As a precondition of participating in the "set-aside" 40 MHz portion of the AWS auction, Industry Canada established rules prohibiting the transfer of any spectrum acquired by a new entrant (including regional cable companies and existing regional telecom providers) to any Incumbent wireless telecommunications provider for a period of five years from the date the license was granted from Industry Canada.

At the conclusion of the auction, 282 licenses were conditionally assigned to 15 bidding companies, and generated total proceeds of C$4.3 billion. The table in Exhibit 9 below summarizes the top eight winning bidders, including the Company, of the AWS (and other frequencies) auction:

EXHIBIT 9

License Winners	# Winning Bids	Total Amount of Winning Bids (000's of C$)	Total Unique POPs	MHz POP	C$ / MHz / POP
Rogers	59	$999,367	30,007,094	600,141,880	$1.67
TELUS	59	$879,889	30,007,094	483,524,030	$1.82
BCE	54	$740,928	27,245,106	397,486,125	$1.86
9193-2962 Québec Inc (Videotron)	17	$554,549	14,687,045	381,060,620	$1.46
WIND®	30	$442,099	23,265,134	334,466,420	$1.32
Mobilicity	10	$243,159	16,121,864	174,600,830	$1.39
1380057 Alberta Ltd. (Shaw)	18	$189,519	9,351,375	188,362,200	$1.01
Public Mobile	4	$52,385	17,675,254	176,752,540	$0.30
Other	31	$152,815	15,151,343	271,686,400	$0.56
TOTAL	**282**	**$4,254,710**	**183,511,309**	**3,008,081,045**	**$1.41**
Three National Incumbents	172	$2,620,184	87,259,294	1,481,152,035	$1.77
All Others	110	$1,634,526	96,252,015	1,526,929,010	$1.07

As noted in Exhibit 9 above, the average cost of the spectrum purchased by the three Incumbents was $1.77/MHz POP, compared to the $1.07/MHz POP average multiple paid by the new entrants for AWS spectrum.

Detailed information regarding the AWS spectrum auction results, policy statements and general rules and regulations are available through Industry Canada's website: www.ic.gc.ca (which information is not incorporated herein).

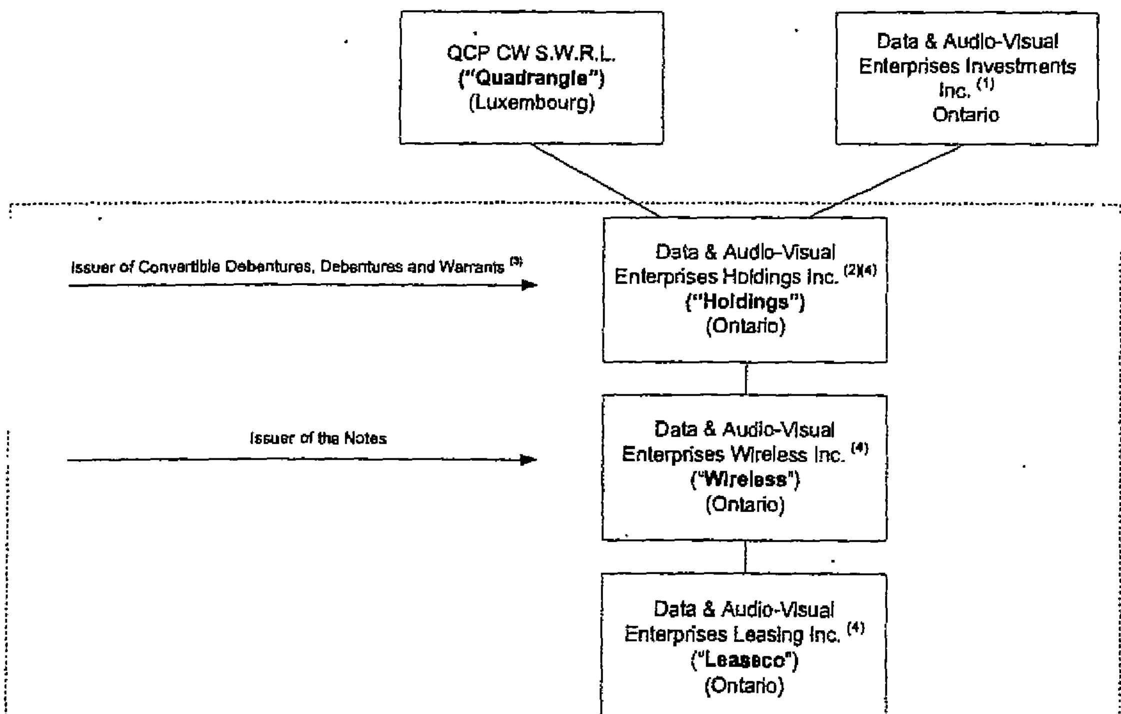
New entrants will have an opportunity to participate in the 700MHz/2.5GHz auctions, expected to commence in late 2012 or early 2013. While not yet announced as of the date of this offering memorandum, auction rules could include additional spectrum that is set-aside for new entrants or spectrum caps for the Incumbents. Neither Holdings nor the Company intends to use proceeds from the Offering or the Additional Offering to purchase additional spectrum in the upcoming 700MHz/2.5GHz auctions.

THE COMPANY

EXHIBIT 10

Corporate Structure

The following organizational chart shows the Company's corporate structure as of the date of this offering memorandum and each entity's jurisdiction of incorporation, and assumes the completion of the offerings and re-payment of the Credit Facility. The Notes will be issued by the Company and will be unconditionally guaranteed as to the payment of principal and interest, on a secured basis, by each existing and future, direct and indirect, subsidiary of the Company and Holdings. The Additional Debentures will be issued by Holdings. See "Description of Other Indebtedness" for a full description of the indebtedness of the Company and Holdings.



(1) Data & Audio-Visual Enterprises Investments Inc. is controlled by an entity affiliated with Obelysk. Obelysk is controlled by John Bitove.
(2) This chart does not display the common shares of Holdings or Wireless owned by management as part of their co-investment arrangements.
(3) Holdings issues certain convertible debentures pursuant to the Quadrangle Facility. See "Description of Other Indebtedness – Convertible Debentures".
(4) Guarantors under the Notes.

History of the Business

Mobilicity was founded in 2007 and in 2008, Obelysk Inc. (controlled by John Bitove), a diversified Canadian private equity firm, formed an investment partnership with Quadrangle Group, a U.S. based private equity firm that focuses on media and telecom investments, to collectively bid for AWS spectrum in the 2008 Canadian spectrum auction and subsequently establish a Canadian wireless carrier.

In August 2008, the Company acquired 10 licenses, set forth in Exhibit 9, at a cost of C$243 million for spectrum holdings covering approximately 16.1 million Canadians, representing approximately half of Canada's population and including Canada's largest and densest English speaking urban markets. As of April 2011, the Company had launched services in the GTA, Metro Vancouver, Ottawa, and Edmonton and plans to launch services in Calgary in late April 2011. Exhibit 11 provides an overview of the spectrum purchased by Mobilicity in the AWS auction:

EXHIBIT 11

	Block	Tier	Price (C$Millions)	MHz	License POPs	C$ / MHz / POP
Eastern Markets						
S. Ontario (Toronto)	C	2	$131.0	10	8,811,117	$1.49
Guelph/Kitchener	D	3	$2.6	20	607,035	$0.43
Niagara	D	3	$1.4	20	354,971	$0.39
Windsor	D	3	$1.6	20	376,213	$0.42
E. Ontario (Ottawa)	C	2	$30.4	10	2,122,177	$1.43
Subtotal – Eastern Markets	**C/D**	**2/3**	**$167.0**	**10/20**	**10,933,294**	**$1.36**
Western Markets						
Vancouver	D	3	$56.4	10	2,310,047	$2.44
Victoria	D	3	$1.8	10	389,247	$0.45
Subtotal – B.C. Markets	D	3	$58.2	10	2,699,294	$2.15
Calgary	D	3	$8.4	10	1,091,673	$0.77
Edmonton	D	3	$9.0	10	1,199,124	$0.75

In the fall of 2008, the Company assembled a management team with a diverse range of experience in Canada's telecommunications industry. Mobilicity signed a multi-year agreement with Ericsson in October 2009 to commence construction of the Company's network. Ericsson built Mobilicity's 3.5G UMTS/HSPA enabled network which provides state of the art features, and best in class voice/data quality. Mobilicity also signed an agreement with Amdocs in October 2009, to provide the Company's real-time billing and rating system which allows for activation, feature initiation and enhancement of customer experience. An agreement with Ingram Micro Corporation ("**Ingram Micro**") was reached in January 2010 to provide logistics and forward purchasing for handset distribution to the Company's dealer network within 48 hours. The Company also signed an agreement with Sitel Teleservices Canada Inc. ("**Sitel**") in January 2010 to provide call centre services that are readily scalable to address large call volumes.

Strategy

Mobilicity is a Canadian wireless carrier that offers simple, affordable, flat rate, unlimited services that target value-conscious consumers in many of Canada's largest, English speaking urban markets. The Company believes its combination of a cutting-edge network, diverse selection of mobile devices, value based pricing, broad distribution footprint, quality customer service, and consumer friendly brand creates a differentiated strategy and competitive position relative to other Canadian wireless carriers. Additionally, unlike similar providers in the U.S., Mobilicity provides its subscribers nationwide coverage through roaming agreements and has deployed a homogenous UMTS/HSPA network compatible with global standards that delivers high quality and reliable voice and high-speed data services on a range of brand name smartphones, data cards and other devices. Mobilicity believes that its participation in the global UMTS/HSPA ecosystem, focus on large urban markets, and philosophy of outsourcing key operating functions to industry leading suppliers provide it with a low cost business model that efficiently utilizes capital.

The Company successfully executed its strategic plan to launch services in the GTA in May 2010, followed by launches in Metro Vancouver, Edmonton and Ottawa in November 2010. Mobilicity intends to launch wireless services in Calgary in late April 2011, thereby completing the rollout of network coverage in each of its initial priority markets.

As a result of its focus on a limited number of large urban markets with attractive population densities, as shown in Exhibit 12, its network deployment strategy and its outsourcing approach, Mobilicity believes its business model will, over the long term, have lower capital expenditures per subscriber and more cost effective sales and marketing initiatives. As a result, Mobilicity believes its model may enable it to attain significant operating leverage and capital efficiency in the future.

EXHIBIT 12

	POPs (Millions)	Land Area[1] (Sq. Miles)	POPs / Sq. Miles
Mobilicity			
GTA	5.1	2,280	2,243
Metro Vancouver	2.1	1,111	1,905
Calgary	1.1	1,973	547
Edmonton	1	3,632	285
Ottawa	1.1	2,209	512
Total (All Markets)	**10.5**	**11,204**	**935**
POP weighted avg / market	*2.1*		*1,620*

(1) Land area based on 2006 Canadian Census data for each respective market

During the AWS spectrum auction, the Company focused on purchasing spectrum in the most densely populated major urban markets in the provinces of Alberta, British Columbia and Ontario. This strategy allows wireless services to be provided to subscribers in a capital efficient manner due to the limited scope of physical asset deployment required to service major Metropolitan areas. The ability to serve more people while covering smaller geographic areas results in higher network capital expenditure efficiency and increases the cost effectiveness of marketing initiatives and distribution.

Mobilicity has outsourced many of its operations to industry leading third party suppliers to provide cost certainty, reduce execution risk and, in some cases, more directly link costs to subscriber acquisition. Operational cost overruns and network/system performance levels related to those contracts are generally the responsibility of these third party service providers. The Company believes that this outsourced model lowers execution risk and improves Mobilicity's capital efficiency and strategic flexibility.

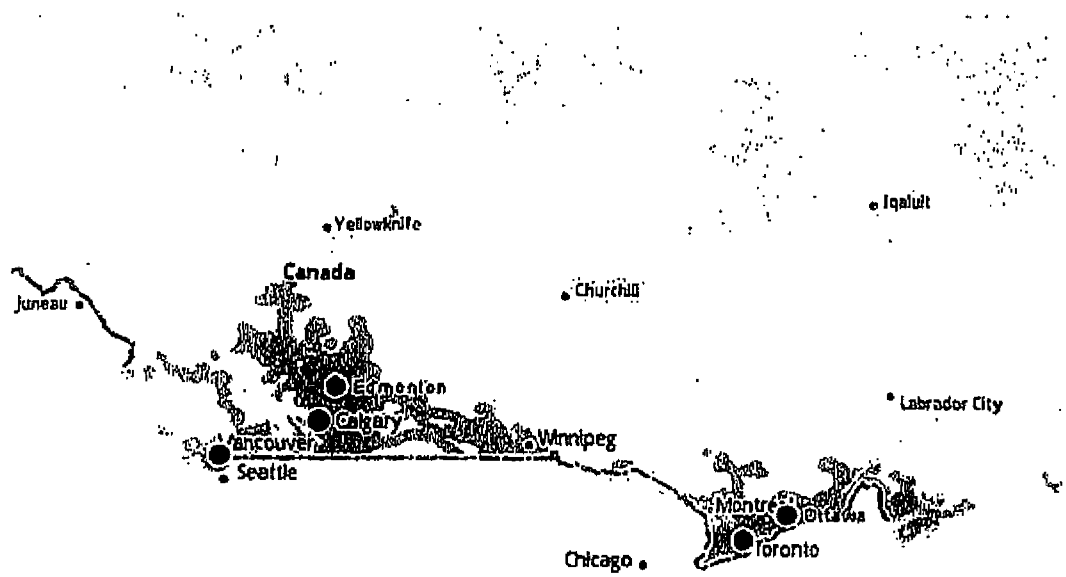
Product Offering

Mobilicity offers a diverse selection of brand name handsets at reasonable prices, including smartphones, which are becoming a key focal point of the Company's offering. Mobilicity believes that its participation in the global UMTS/HSPA ecosystem with a network architecture consistent with that of T-Mobile and certain other AWS spectrum owners provides it with access to a greater array of handsets at a lower price than would be available were it using non-standard spectrum or CDMA technology.

Smartphones, as a percentage of the total mobile phone market, are expected to grow globally from 14% in 2010 to 46% in 2014. To meet this growing demand, Mobilicity provides its customers with smartphone alternatives in three pricing tiers: less than $100, between $100 and $199, and above $200. Mobilicity is the exclusive provider of certain smartphones in English Canada, including Google's Nexus One™. As part of its low-cost delivery model, the Company aims to maintain low subsidies on its handsets.

The map in Exhibit 13 shows Mobilicity's coverage area. The pink dots show Mobilicity's unlimited coverage areas (as of March 31, 2011), where customers receive unlimited use of all features in their plan. The blue dot shows Mobilicity's unlimited coverage area around Calgary, which is expected to commence in late April 2011. The grey areas highlight Mobilicity's nationwide coverage (through a roaming agreement), where customers can still use their phone for talk, text and data for a pay-per-use rate. The Company has agreements that allow customers to roam across Canada, the United States, and several international destinations.

EXHIBIT 13



Mobilicity offers simple rate plans that are comprehensive in scope and easy to use. The Company offers three rate plans that are easy for consumers to understand and help facilitate a quick sale process. Service plans start at $25 for unlimited talk and text, increase to $35 for add-on features and province-wide long distance, and $45 for unlimited North American long distance and global texting. The services offered for each price plan, as of March 31, 2011, are as follows:

EXHIBIT 14

	$25	$35	$45
Text & Picture Messaging	✓	✓	✓
Local Calling	✓	✓	✓
Caller I D	✓	✓	✓
Mobilicity to Mobilicity Calling	✓	✓	✓
Voicemail	$8 Add-on	✓	✓
Call Waiting Call Forwarding 3 Way Calling	$5 Add-on	✓	✓
Province Wide Long Distance		✓	✓
Canadian Long Distance	$10 Add-on	$10 Add-on	✓
U.S. Long Distance	$10 Add-on	$10 Add-on	✓
Global Text Messaging	$5 Add-on	$5 Add-on	✓

To meet the growing demand for high-speed data services, Mobilicity offers customers the ability to add unlimited data to their plans for an additional $10. Mobilicity also offers several key value added features including unlimited international long distance calling to certain countries and handset insurance, which can be added to any of the rate plans.

Distribution Channels

Mobilicity has established an extensive distribution network in each of its four launched markets, currently consisting of more than 700 points of distribution. Through direct and indirect partnerships, the Company utilizes several distribution channels and platforms for selling its handsets and service plans, and Mobilicity believes that its extensive distribution footprint is a competitive advantage in attracting and supporting its customer base.

The Company's direct distribution is conducted through its 14 corporate stores that offer complete services, including: activating new subscribers, servicing existing customers, receiving and processing monthly payments, coordinating handset returns and acting as training centers for independent dealers.

The Company has indirect distribution agreements through independent exclusive dealers ("**Platinum**", "**Gold Exclusive**" and "**Silver Exclusive**"), independent non-exclusive dealers ("**Gold**" and "**Silver**") and several retail partnerships. Platinum dealers own and operate Mobilicity-branded storefronts, exclusively sell Mobilicity products, and offer most of the services that are provided through corporate stores. Gold Exclusive and Silver Exclusive stores sell non-wireless-related products as well as Mobilicity wireless products. Gold and Silver non-exclusive dealers may carry competitive wireless products, and some stores may offer fewer services and products than exclusive channels. The Company has agreements with several retail vendors including: Zellers Inc., HMV Canada Inc., Money Mart® and 7-Eleven®. Through these agreements, the Company is able to leverage the established retail networks and brands of these retailers in order to broaden the reach to its customer base.

Customers

Mobilicity has a diverse customer base that subscribes to Mobilicity's services for several reasons. Mobilicity believes that its value based pricing, simple pricing plans, nationwide coverage through roaming agreements and unlimited features, including its array of unlimited voice, long distance, testing and data packages, appeals broadly to mainstream Canadians in its markets. Additionally, the Company has focused on underserved market segments, including lower income and ethnic communities, through its distribution footprint and calling plans that specifically target these communities. As a result, Mobilicity believes that customers subscribe to Mobilicity's services as a primary wireless service, a wireless alternative to incumbent wireless providers, a secondary wireless phone, a replacement for traditional land-line service, and as an alternative for home internet access. As at December 31, 2010, Mobility had approximately 84,000 subscribers.

Over the past decade, a growing percentage of households have become mobile-only (i.e., households that have replaced their wireline phone with mobile phones.) Approximately 8% of Canada's households are considered mobile-only households compared to 25% in the U.S. Exhibit 6 presented in the Industry Overview section highlights the expected increase in mobile-only households. Approximately 1.4 million wireline subscribers churn annually from Incumbent providers and Mobilicity is positioning itself to capture as many of these churning subscribers as possible. Another source of new subscribers for the Company is dissatisfied customers that have disconnected, or are planning to disconnect, from their service provider at the end of the contract term. Based on company filings, approximately 4.4 million wireless subscribers disconnect annually in Canada from the Incumbents. Customer churn from existing wireless providers, combined with wireline disconnects, provides a significant opportunity for Mobilicity to grow its existing subscriber base.

Employees

As of December 31, 2010, the Company had 195 full-time equivalents employed. This consisted of 120 employees focused on sales and marketing (including corporate store employees), and 75 employees focused on operations and administration. None of the Company's employees are unionized.

Network and Systems

The implementation of Mobilicity's wireless network is coordinated and performed primarily by Ericsson and its sub-contractors.

The network architecture is a 3.5G UMTS/HSPA enabled network which includes both switching and IP routing infrastructures, an IP microwave backhaul infrastructure, IP core services platform and a Radio Access Network ("**RAN**"). The RAN may be further enhanced in the future to operate at higher speeds through software upgrades. There are two primary switch locations, in Toronto and Vancouver, which provide redundancy to each other and contain the necessary core components required to operate the network. The switch locations are also equipped with back-up generators in the event of a power failure. Routing and core applications occur at the Toronto switch location. The switches, core and routers are responsible for providing the essential functions required to run the network including user authentication, domestic and long-distance connection, data usage and voicemail functionality, among others. The Company owns a majority of its transport and backhaul infrastructure, which is operated by microwave radios provided by Ericsson, and the spectrum licenses for microwave and radio transmission through Industry Canada. Each city in Mobilicity's network has multiple fibre optic backhaul points to provide system resiliency and fail-over redundancy. Internet connectivity in the network is provided by MTS Allstream Inc. Mobilicity buys local calling connectivity through multiple Public Switched Telephone Network ("**PSTN**") providers. As of March 31, 2011, the Company has entered into leases for 400 physical tower sites and rooftops across all of its markets. Sites typically have an initial lease term of five years, with multiple five year options to renew.

Billing and operational support systems are maintained by Amdocs. The Company does not own any of the Amdocs servers, however the equipment resides in Mobilicity's switch centers located in Toronto. The Company outsources the maintenance and repair of the servers to Amdocs.

Facilities

Mobilicity leases two offices located in Toronto and Vancouver. The Company also leases co-location data centers in Toronto and Vancouver and operates offices in Edmonton, Ottawa and Calgary.

Major Suppliers

The Company's major suppliers include Ericsson, Amdocs, Ingram Micro and Sitel.

Ericsson has built a 3.5G UMTS/HSPA enabled network that provides contemporary features and high quality voice and data services. Ericsson was not only responsible for the build and launch of the network, but has also been retained to monitor and maintain the network to ensure that Mobilicity customers continue to receive reliable service. Ericsson's construction contract (signed October 2009) and managed services contract (signed March 2010) are due to expire on July 2014 and December 2014, respectively.

Mobilicity signed a contract with Amdocs in October 2009 under which Amdocs provides a real-time billing and rating system that includes activation, provisioning, rating and charging. Amdocs is considered to be the industry's leading vendor for billing, and has experience with businesses similar to Mobilicity. This outsourcing agreement increases Mobilicity's capital efficiency as all equipment and servers are the property of Amdocs. The Amdocs contract has a duration of six years, after which the Company, at its option, shall have the right to a perpetual, non-exclusive and non-transferable license to use the Amdocs systems..

An agreement with Ingram Micro was reached in January 2010 to provide logistics and forward purchasing, as well as Turn-Key Solutions for handset distribution, to the Company's distribution channels partners. This outsourcing agreement increases capital efficiency as Ingram Micro purchases inventory from OEMs, and resells to dealers. In most circumstances, the Company must purchase the inventory from Ingram Micro if the inventory does not sell through the distribution channels within six months. Ingram Micro provides delivery to dealers within 24 to 48 hours, thereby providing the Company with enhanced flexibility to meet changing customer demands. The contract has a term of three years and is terminable on each annual renewal date with 90 days notice.

Mobilicity signed a contract with Sitel in January 2010 to provide call centre services that are readily scalable to match fluctuations in customer call volume. This contract includes flexible pricing that allows Mobilicity to manage growth effectively. The call centre contract terminates on April 30, 2013 and is terminable upon 120 days prior notice.

Roaming

Industry Canada requires that, where technically feasible, cellular, PCS and AWS licensees offer automatic digital roaming on their networks in the manner set forth in the section of this offering memorandum titled "Industry Overview – Mandatory Roaming". Mobilicity provides nationwide coverage through roaming agreements.

OVERVIEW OF COMPETITIVE LANDSCAPE

Competition for subscribers among wireless providers is based upon branding and marketing, network services and system features, the reception quality of wireless networks, customer service levels and practices, network capacity, handset selection and functionality, and service pricing. Strong competition in the Canadian wireless market is expected to prevail in the near-term as new entrants compete for market share with each other and the Incumbents, who offer nation-wide full-service plans as well as low cost options through their flanker brands and MVNOs.

Incumbent Brands

The Canadian Incumbents provide wireless voice and data communications products and services to residential and business customers across Canada. Wireless services are offered over technologically advanced national wireless networks, and are available to virtually all of the Canadian population.

Incumbent Flanker Brands

As a result of the 2008 AWS auction and the increased competition from value-based wireless service offerings by the new entrants, the Incumbents have launched a series of "flanker brands" (e.g., Chatr™, Solo™, Koodo mobile™ and Clearnet™) in an attempt to compete with the new entrants. Some of these flanker brands offer no contract, unlimited plans that are comparable to new entrant offerings. The new flanker brand offerings were recently launched to compete on price with Mobilicity and other new entrants, are branded as completely separate entities from their parent companies and provide differentiated service offerings compared to their parent companies. Publicly available information for the flankers is limited due to their recent service launches.

MVNOs

MVNO operators resell the services of the Incumbents under their own established brands, such as Petro-Canada Mobility™, Speakout™ Wireless (7-Eleven®), PC Mobile (a division of Loblaws Inc.), Primus Telecommunications Canada Inc. and Sears Connect®. The offerings from the MVNOs generally mirror prepaid offerings from the Incumbent brands.

New Entrants

Two new market entrants, WIND® and Public Mobile, have launched services on their own networks in the regions in which Mobilicity operates and each offer "unlimited", contract-free, pay-in-advance wireless services in Canada. These new entrants are planning to serve consumers that are seeking high quality, pay-in-advance, value-based wireless services. Both value carriers do not have penalizing contract termination policies like the Incumbents, who often have three-year lock-ups with customers.

Mobilicity and WIND® have emerged as value providers fighting for market share in the same Canadian urban regions. In addition, Public Mobile has launched a voice-only, value-based service in Toronto and Montreal. It is Mobilicity's goal to differentiate itself from other low-cost carriers through simple, customer friendly service plans, enhanced network coverage and features, handset selection and quality of service.

In 2009, Egyptian telecom carrier Orascom Telecom S.A.E., in partnership with Globalive Wireless Management Corp. (a Canadian long distance reseller), launched WIND®. WIND® initially launched services in the Toronto and Calgary markets, followed by launches in Vancouver, Edmonton and Ottawa. The Company believes that WIND® currently offers the most competitive service plans compared to Mobilicity in terms of value-based pricing for "all-you-can-eat" offerings.

Mobilicity also competes with Public Mobile, a new entrant backed by Columbia Capital, M/C Venture Partners and other venture capital firms. Public Mobile purchased G band spectrum in Ontario and Quebec, and launched service in Toronto during May 2010, followed by a launch in Montreal in June 2010. While Public Mobile offers unlimited talk and text plans similar to that of Mobilicity, basic data services were only recently introduced using slower, 10 year old technology. Public Mobile currently serves only two markets, Montreal and Toronto.

MANAGEMENT'S DISCUSSION AND ANALYSIS

This management's discussion and analysis ("MD&A") discusses the significant factors affecting the results of operations and financial position of Holdings for the years ended December 31, 2010 and 2009. This MD&A should be read in conjunction with Holdings' audited consolidated financial statements and related notes thereto. The financial statements of Holdings are prepared in accordance with IFRS and are expressed in Canadian dollars, unless otherwise noted.

Results of Operations – Fiscal Years Ended 2010 and 2009

($)	For the year ended December 31,	
	2010	2009
Revenue	9,219,568	0
Cost of services and hardware	(15,237,338)	0
Operating expenses	(68,189,858)	(14,236,647)
Operating loss	(74,207,628)	(14,236,647)
Finance income	276,848	19,607
Finance costs	(22,098,410)	(1,597,381)
Loss for the year	(96,029,190)	(15,814,421)

Revenue

Revenue was $9.2 million in 2010. No revenue was earned in 2009. Commercial operations were launched in the GTA in May 2010, with Metro Vancouver, Ottawa and Edmonton commencing in November 2010. More than 75% of revenue in 2010 is attributable to service revenue, which primarily includes monthly rate plans and pay-per use services. The balance of revenue is from hardware sales, primarily handsets and accessories sold through direct sales channels. Holdings expects the proportion of service revenue to hardware revenue to grow as the subscriber base grows.

Cost of Services and Hardware

Cost of services and hardware was $15.2 million in 2010. These costs primarily include: costs associated with handsets and accessories sold through direct sales channels; subsidies on handsets sold through indirect sales channels; and certain third-party service delivery costs associated with subscriber usage, such as long distance. These costs were not incurred in 2009 as no subscribers were acquired until commercial operations were launched in May 2010.

Operating Expenses

Operating expenses were $68.2 million in 2010, compared to $14.2 million in 2009. The table below provides additional detail regarding operating expenses.

($)	For the year ended December 31,	
	2010	2009
Advertising & sales expenses	19,488,845	872,887
Technical and professional support and maintenance fees	14,983,990	3,906,665
Employee related expenses	14,289,586	6,443,502
Amortization	5,742,697	6,062
Site and building rent	4,603,014	120,611
Share-based payments	1,656,262	680,000
Other expenses	7,425,464	2,206,920
Operating expenses	68,189,858	14,236,647

Most operating expenses in 2009 were related to employees and consultants, as the Company prepared to launch commercial operations in 2010. Operating expenses in 2010 increased primarily due to the commercial launches across four markets, specifically:

- Certain costs associated with acquiring subscribers, including: commissions to dealers and advertising & sales expenses;
- Costs associated with retaining the subscriber base, including: call centre operations and network operations; and
- General and administrative expenses, such as employee related expenses, due to a larger employee base required to manage the newly launched operations.

Finance Costs

Finance costs are primarily related to interest expense and related amortization on the Credit Facility, the Convertible Debentures (as defined in the section titled "Description of Other Indebtedness – Convertible Debentures") and the 2009 Debentures (as defined in the section titled "Description of Other Indebtedness – 2009 Debentures"). Finance costs increased from $1.6 million in 2009 to $22.1 million in 2010 due to higher outstanding borrowings under the Credit Facility, a complete fiscal year of interest expense on the 2009 Debentures (issued in December 2009), and additional amounts borrowed under the Convertible Debentures, as the Company continued to build its network and finance the increased working capital needs due to the launch of commercial operations.

EBITDA

EBITDA was ($66.5) million in 2010, compared to ($13.0) million in 2009. EBITDA is a non-IFRS measure. Holdings presents EBITDA because it is a significant metric used by management and investors to measure the operating performance of the business. A reconciliation from operating loss to EBITDA for the period is provided below.

($)	For the year ended December 31,	
	2010	2009
Operating loss	(74,207,628)	(14,236,647)
Amortization	5,742,697	6,062
Share-based payments	1,656,262	680,000
Capital Taxes	307,203	506,478
EBITDA	(66,501,466)	(13,044,107)

Key Operating Metrics

The operating metrics outlined below are measures of operational performance and not measures of financial performance under IFRS. The Company believes these are useful measures of operating performance and are a significant basis by which management and investors measure the operating performance of the business.

	For the year ended December 31,	
	2010	2009
ARPU	$32.66	NM
Churn	4.0%	NM
Subscribers as at December 31	84,067	NM
CPGA	$407	NM

Operating metrics were not meaningful in 2009 since the Company did not launch commercial operations until May 2010.

Average Monthly Subscription Revenue Per Subscriber (ARPU): derived from the total of earned service revenue (net of promotions and credits), divided by the sum of the average monthly number of subscribers during such period. ARPU may fluctuate based on promotions, changes in the Company's pricing plans, and the adoption rate of multi-month prepayment plans, multi-subscriber discount plans (such as family plans) and service features (such as handset insurance and long distance bundles). For the year ended December 31, 2010, ARPU was $32.66.

Average Monthly Churn Rate (Churn): represents the number of subscribers who have been disconnected from the system during the measurement period less the number of subscribers who have reactivated service, divided by the sum of the average monthly number of subscribers during such period. The Company classifies delinquent subscribers as churn after they have been delinquent on their payment to renew services for a period of 30 days. For the year ended December 31, 2010, churn was 4.0%. As the Company does not require a long-term service contract, the churn percentage is expected to be higher than traditional postpaid wireless services that require subscribers to sign multi-year contracts with significant early termination fees.

Subscribers: includes, at any point in time, revenue generating subscribers who are receiving and have paid for service, as well as subscribers who are delinquent, for up to 30 days, and are not receiving service. As at December 31, 2010, the Company had approximately 84,000 subscribers.

Cost Per Gross Addition (CPGA): includes subscriber acquisition costs associated with selling handsets (commissions, subsidies, distribution costs and net costs related to equipment sold directly to the subscriber), as well as advertising and marketing costs (advertising, media and other discretionary marketing expenses as well as the costs of sales & marketing staff). These costs are divided by the number of gross additions for the period to calculate CPGA. For the year ended December 31, 2010, CPGA was $407. Due to the launch of commercial operations in 2010, the Company has not yet been able to achieve economies of scale on CPGA, specifically with respect to advertising and marketing costs.

Liquidity and Capital Resources

As at December 31, 2010, Holdings had $16.8 million of cash and cash equivalents on hand. This represented a decrease of $78.5 million from December 31, 2009. As of December 31, 2010, Holdings had available capacity of approximately $56 million under the Credit Facility for purchases of network equipment and services (approximately $5 million of the $56 million available was subsequently drawn in the first quarter of 2011), and $54 million available from the Convertible Debentures for working capital and other operating needs ($19 million of the $54 million available was subsequently drawn in January 2011).

Cash flow from operating activities

Operating activities primarily consist of net loss for the year adjusted for certain non-cash items including amortization, non-cash interest accretion, share-based payments and the effect of changes in non-cash working capital. During 2010, cash used in operating activities was ($68.9) million, compared to ($7.4) million in 2009.

In 2010, cash used in operating activities consisted of a loss of ($96.0) million, offset by:

- amortization of $5.7, mostly related to the network infrastructure
- share-based payments accruals of $1.7 million
- accrued interest (non cash payments) of $20.3 million, and
- net decreases in working capital and other of ($0.6) million, primarily related to the network build out less taxes receivable.

In 2009, cash used in operating activities consisted of a loss of ($15.8) million, offset by:

- share-based payment accruals of $0.7 million
- net increases in working capital and other of $7.8 million, primarily related to the network build out

Cash flow from investing activities

Investing activities primarily consist of equipment and services related to the build out of the network. During both periods, a majority of these costs were related to the construction of the Company's network. During 2010, cash flow from investing activities was ($66.4) million, compared to ($21.2) million in 2009.

Cash flow from financing activities

Financing activities primarily consist of proceeds from the issuance of Convertible Debentures, 2009 Debentures and the Credit Facility. During 2010, cash generated from financing activities, net of fees, was $56.8 million, compared to $121.5 million, net of fees, in 2009. During 2010, all $56.8 million was generated from draws under the Credit Facility, whereas 2009 included $113.2 million of cash from Convertible Debentures and Debentures, and an $8.3 million drawn from the Credit Facility.

Commitments

The Company has entered into non-cancellable operating leases on certain properties, network infrastructure and items of equipment. The leases have various terms, escalation clauses, purchase options and renewal rights, none of which are individually significant to the Company. The future aggregate minimum lease payments are $24 million.

The Company has entered into various managed service and enterprise support provider agreements related to its outsourced services and its business management software. The future aggregate minimum case payments due under the agreements are approximately $79 million.

Capital expenditures contracted for at the end of 2010 but not yet incurred are $21 million.

Recent Developments

The following is the Company's preliminary estimated results for the first quarter of 2011 ended March 31, 2011.

As of March 31, 2011, the Company estimates that it had total subscribers of approximately 105,000, an increase of approximately 25% over the year ended December 31, 2010 total subscribers of approximately 84,000. Management believes the Company has maintained its share of the Canadian wireless market in a seasonally slow quarter for subscriber additions. Over the same period, ARPU is expected to be in the range of $29 - $31 compared to $32.12 for the fourth quarter of 2010. ARPU was impacted by the sale of multi-month plans and promotional activities during the period.

Revenue is expected to be within a range of approximately $9 - $10 million in the first quarter of 2011 compared to $6.1 million in the fourth quarter of 2010. EBITDA is expected to be within a range of ($16)-($19) million, compared to ($33.4) million in the fourth quarter of 2010. Capital additions, primarily for network construction, are expected in the range of $7 - $13 million compared to $13.8 million in the fourth quarter of 2010. Churn is expected to be approximately 4.4% compared to 3.8% for the fourth quarter of 2010. CPGA is expected to be in the range of $340 - $380 compared to $404 for the fourth quarter of 2010.

These estimated results are preliminary in nature and actual results for first quarter 2011 may differ from the Company's estimates. The Company's operating history is limited and may not be indicative of future results of operations. Given the early stage of its operations, the Company expects its results to be particularly volatile due to seasonality. The Company's financial performance for current and future fiscal periods is not guaranteed and is based on the Company's limited operating history, as well as estimated operational improvements and operating leverage. See "Risk Factors".

SELECTED HISTORICAL FINANCIAL INFORMATION

The following selected historical financial information is derived from, and should be read in conjunction with, Holdings' audited consolidated financial statements for the fiscal years ended December 31, 2009 and December 31, 2010, respectively.

Data & Audio-Visual Enterprises Holdings Inc. Consolidated

	For the Year Ended December 31st	
($ in millions; except selected operating metrics)	**2010**	**2009**
Summary Financial Data		
Revenue	$9.2	–
EBITDA[1]	($66.5)	($13.0)
Operating Loss	($74.2)	($14.2)
Net Loss	($96.0)	($15.8)
Cash Flow Data		
Amortization	$5.7	$0.0
Capital Expenditures[2]	$66.4	$21.2
Selected Operating Metrics[1]		
ARPU	$32.66	NM
Churn	4.0%	NM
Subscribers (000s)	84	NM
CPGA	$407	NM

	Actual As Of December 31st	
($ in millions)	**2010**	**2009**
Selected Balance Sheet Data		
Intangible Assets[3]	$247.5	$246.9
Property Plant & Equipment	$84.5	$21.4

(1) Holdings uses certain non-IFRS financial measures to assess its financial performance, including ARPU, churn, CPGA, subscribers and EBITDA (see "Management's Discussion and Analysis – Key Operating Metrics"). Holdings uses such non-IFRS financial measures because Holdings believes that they are meaningful measures by which management and investors measure Holdings' performance. Holdings' method of calculating these non-IFRS financial measures may differ from the methods used by other issuers, and as a result the non-IFRS financial measures presented in this offering memorandum may not be comparable to other similarly titled measures used by other issuers.

(2) Includes capital expenditures on Property, Plant and Equipment, and Intangible Assets.

(3) Intangible assets represents the net book value of the Company's spectrum assets.

THE REFINANCING

The offering of Notes and the Additional Debentures is part of a larger refinancing plan to revise the Company's capital structure and provide it with greater flexibility to execute on strategic initiatives, including broadening its target market and enhancing the data capabilities of its network. The Refinancing includes: (i) the issuance of the Notes and Additional Debentures, (ii) the repayment of the Credit Facility, (iii) certain modifications of the 2009 Debentures, (iv) certain modifications to the Quadrangle Facility and its extension to December 31, 2013, and (v) the payment of fees and expenses related to these transactions. See "Use of Proceeds".

USE OF PROCEEDS

The gross proceeds of the Offering and the Additional Offering will be $185 million and $20 million, respectively. The net proceeds of the Additional Offering will be contributed to the Company by Holdings. Approximately $71 million of the net proceeds will be used by the Company to repay the outstanding amount on the Credit Facility and pay additional costs associated with terminating the Credit Facility, and the balance will be added to the working capital of the Company and will be used for capital expenditures and general corporate purposes. The capital expenditures are primarily related to network deployment, and are intended to ensure that the markets where the Company has unlimited services (Toronto, Vancouver, Edmonton, Ottawa, and expected in late April 2011, Calgary) have both sufficient coverage as well as capacity as the subscriber base grows. Please refer to the section entitled "Capitalization" for a further understanding of the capital structure of the Company and Holdings.

The following table sets out the estimated sources and uses of the proceeds from the Offering and the Additional Offering (assuming debt as of December 31, 2010). Actual amounts may vary from estimated amounts depending on several factors, including the amount of debt outstanding and the actual interest accrued thereon on December 31, 2010 and the closing date of the Offering and the Additional Offering, additional amounts drawn from December 31, 2010 to closing and changes in the fees and expenses incurred in connection with the Offering and the Additional Offering.

Sources	**($ millions)**	**Uses**	**($ millions)**
Notes	$185.0	Repayment of Credit Facility[1]	$ 69.7
		Fees for terminating the Credit Facility	1.2
Additional Debentures	20.0	Transaction fees and expenses[2]	8.0
		Capital expenditures and general corporate purposes	126.1
Total Sources	$205.0	Total Uses	$205.0

[1] Reflects the drawn amount on the Credit Facility, plus accrued interest, as at December 31, 2010. Approximately $5 million was drawn on the Credit Facility between January 1, 2011 and March 31, 2011.
[2] Includes Underwriters' fees and other costs associated with the Offering and the Additional Offering payable by the Company and Holdings.

CAPITALIZATION

The following table sets forth Holdings' capitalization at December 31, 2010, on an actual basis, and on an as adjusted basis to give effect to the Offering, the Additional Offering and the repayment of the Credit Facility. This table should be read in conjunction with the Company's consolidated financial statements and the related notes included elsewhere in this offering memorandum and with the information under the captions "Selected Historical Financial Information", "Management's Discussion and Analysis", "Description of the Notes", and "Description of the Debentures".

	As At December 31, 2010		
($ millions)	Actual	Adjustments	Pro Forma
Company			
Credit Facility[1]	$65.7	($65.7)	$ –
Notes[2]	--	178.0	178.0
	65.7		**178.0**
Holdings			
2009 Debentures and Additional Debentures[3]	73.5	16.0	89.5
Convertible Debentures[4]	33.3		33.3
	106.8		**122.8**
Holdings' Consolidated Debt	**172.5**		**300.8**
Holdings' Equity[5]	**165.0**	**3.0**	**162.8**
		(4.0)	
		(1.2)	
Holdings' Consolidated Capitalization	**$337.5**		**$463.6**

(1) The Credit Facility reflects principal outstanding of $69.3 million plus accrued interest, net of deferred financing costs related to the Credit Facility. Pro forma amounts reflect the repayment of the Credit Facility from proceeds of the Offering.

(2) Reflects the Offering, net of the Underwriters' fees and costs related to the Offering.

(3) The Debentures reflects the principal outstanding of the Debentures, less $12 million ascribed to warrants and reflected within equity, plus accrued interest, net of capitalized costs of the Debentures. Pro forma amounts reflect the Additional Offering less the amount ascribed to related new warrants.

(4) The Convertible Debentures reflects the principal outstanding of the Convertible Debentures, less $12.9 million ascribed to warrants and reflected within equity, plus accrued interest, net of capitalized costs of the Convertible Debentures.

(5) Pro forma equity represents historical equity of Holdings plus the amount ascribed to new warrants in the offering of Additional Debentures less the writeoff of deferred financing costs of the Credit Facility, and early termination fees related to the Credit Facility.

DIRECTORS AND OFFICERS

The names and positions held by each director, officer and member of senior management of the Company described below are as follows:

Name	Office
John Bitove	Director and Chairman of the Board
John Barnett	Director
Michael Birkin	Director
Paul V. Godfrey	Director
Michael Huber	Director
Thomas Kohut	Director
Michael Moskowitz	Director
Michael Neuman	Director
Dave Dobbin	President and Chief Executive Officer
Stewart Lyons	Chief Operating Officer
Joe Prodan	Chief Financial Officer
Sharyn Gravelle	Vice President of Network Operations
Sara Moore	Vice President of Marketing
Doug Perry	Vice President of Sales

Directors

The Company has an experienced and diverse board of directors that is comprised of the following members.

John Bitove, Chairman of the Board

John Bitove has a long record of accomplishments in business and community service. He is the principal shareholder of Obelysk, which controls several businesses in Canada, including Mobilicity, Canadian Satellite Radio Holdings and Scott's REIT. Mr. Bitove is also the founder of S'Cool Life Fund, a Canadian charity aimed at helping to make school life more enjoyable for thousands of public elementary school kids. Mr. Bitove founded the Toronto Raptors of the NBA and the Air Canada Centre. He was also the CEO of Toronto's Bid for the 2008 Olympic Games.

John Barnett, Director

John Barnett qualified in England as a Chartered Accountant and is a member of the Institute of Chartered Accountants in England and Wales and the Canadian Institute of Chartered Accountants. He immigrated to Canada in 1967 and worked for Price Waterhouse in Toronto until 1972. On leaving Price Waterhouse, he joined Rothmans of Pall Mall Canada as Comptroller. In 1973, he was transferred to a brewing subsidiary of Rothmans and assumed increasing responsibilities in the beer business, both in Canada and the United States. In 1998, he resigned from Molson Breweries, and was appointed President and CEO of Rothmans Benson & Hedges. Mr. Barnett is Chairman of Special Olympics Foundation Canada, a Director of Canadian Special Olympics, and a Director and past President of Proaction-Cops Helping Kids.

Michael Birkin, Director

Michael Birkin is a Partner of Red Peak Group, a global marketing services group based in New York, Chicago, Los Angeles and London. He began his career at Price Waterhouse, eventually moving to Interbrand, the branding and identity consultancy, where he served as Chief Executive for eight years. After Interbrand was acquired by Omnicom Group Inc., Mr. Birkin held several high-profile roles at the company, including President of its worldwide Diversified Agency Services division, Vice Chairman of Omnicom Group Inc., and Chairman and CEO of Omnicom Asia Pacific. Mr. Birkin is a graduate of University College, London, where he studied law.

Paul V. Godfrey, Director

Paul Godfrey is President and CEO, Postmedia Network and Chair of the Ontario Lottery and Gaming Corporation. First elected to public office in 1964, Mr. Godfrey served as Chairman of the Municipality of Metropolitan Toronto from 1973 to 1984. Mr. Godfrey joined the Toronto Sun in 1984 as Publisher & CEO and was appointed President & COO of the Toronto Sun Publishing Corporation in 1991. From 1992 to 2000, he was President and CEO of the Toronto Sun Publishing Corporation, later known as Sun Media Corporation. In the 1970s, Mr. Godfrey led efforts to bring Major League Baseball to Toronto. Mr. Godfrey was President and CEO of the Toronto Blue Jays Baseball Club from 2000 to 2008. Mr. Godfrey is active in many associations, most notably the Herbie Fund which he and his wife founded in 1979. Mr. Godfrey is a Member of the Order of Canada and the Order of Ontario.

Michael Huber, Director

Michael Huber joined Quadrangle Group LLC in 2000 and is President and a Managing Principal. Mr. Huber currently serves on the Boards of Directors of Access Spectrum, Cequel Communications, Get AS, Hargray Holdings, Holdings and NTELOS Holdings. Prior to joining Quadrangle, Mr. Huber was an investment banker at Lazard Frères & Co. LLC and Donaldson, Lufkin & Jenrette. He received a B.A., magna cum laude, in mathematics from Macalester College, where he was a member of Phi Beta Kappa, and an M.B.A. from the Sloan School of Management at MIT. Mr. Huber was also awarded a Rotary Foundation scholarship to study economics at Universidad Complutense de Madrid. Mr. Huber is also a member of the Board of Trustees of Macalaster College.

Thomas Kohut, Director

Thomas Kohut is a Principal at Quadrangle Group LLC. Mr. Kohut currently serves on the Board of Directors of Holdings. Mr. Kohut has 25 years of broad based financial advisory and operating experience for both public and private companies. As a senior financial executive, Mr. Kohut's areas of expertise include accounting, policies and controls, project management, strategic planning, and executing M&A, IPO and restructuring transactions. Mr. Kohut has been successful in managing public and private company operations as well as executing strategic transactions and public filing requirements to transform companies and create value. Prior to Quadrangle, Mr. Kohut worked as a senior executive in financial and operating capacities at Ernst & Young and MacAndrews & Forbes.

Michael Moskowitz, Director

Michael Moskowitz is President and CEO of XM Canada, responsible for overseeing all aspects of XM Canada's operations from OEM and aftermarket sales to programming, marketing, partnership development, finance and operations. He has outstanding experience as a leader having worked more than 15 years in the Canadian communications and technology industries. Mr. Moskowitz is former President, Americas International of Palm, Inc. which encompasses Canada, Latin America and the Caribbean. Prior to Palm, he worked at several leading global consumer electronics product companies. Mr. Moskowitz was a 'Top 40 Under 40' award recipient in 2004 and holds an honours degree from York University and an MBA from Dalhousie University.

Michael Neuman, Director

Michael Neuman is Managing Director of Elevest Corporation, a consulting firm engaged in the provision of capital and management resources to early stage technology companies. Mr. Neuman has enjoyed a 25-year executive career in roles spanning business-to-business and consumer products and services in Canada, U.S. and Europe, in public and private companies ranging from start-up to Fortune 500. Mr. Neuman has led companies through significant change including turnaround, reorganization, sale/merger as well as very high growth in satellite TV, Internet and wireless. Mr. Neuman's previously held President or CEO positions include EchoStar Corp.; Bell Mobility; Bell ExpressVu; iaxis inc.; Teleglobe Europe; WorldLinx Telecom; Cerberus Canada and V Band Corporation.

Officers and Senior Management

The Company has an experienced, long-serving management team. Through equity compensation, each member of this team is motivated to ensure success of the Company.

Dave Dobbin, President & Chief Executive Officer

Dave Dobbin is President and Chief Executive Officer of Mobilicity, responsible for leading the market growth and development of the Company, with overall responsibility for business strategy, sales, marketing, network operations and customer care. Prior to joining Mobilicity, Mr. Dobbin was President of Toronto Hydro Telecom Inc. (THTI), the telecommunication subsidiary of Toronto Hydro Corporation. In 2008, Mr. Dobbin led the sale of THTI to Cogeco Cable Inc. for $200 million, the largest Canadian transaction for a utility telecom asset. During his tenure, THTI implemented the largest wireless mesh network in North America, installed the first switched DWDM core network in Canada and produced 12 quarters of consecutive EBITDA and net income growth. From 2001 to 2005, Mr. Dobbin was the Chief Operating Officer of Telecom Ottawa where he created a successful telecommunications subsidiary for Hydro Ottawa Holdings Inc. Prior to this position, Mr. Dobbin was Project Executive at Hydro One Telecom/SCBN, as well as Vice President, Operations at BDO Watson & Associates. Mr. Dobbin started his career by founding a retail telecommunication chain with locations across Western Canada. The chain grew to be the largest distributor of TELUS products and services in the country. In 2006, he was named one of Canada's Top 40 Under 40, a national program that celebrates the country's leaders of today and tomorrow, and that honours Canadians who have reached a significant level of success but have not yet reached the age of 40. Mr. Dobbin is the founder, former chair and active supporter of the Toronto Board of Trade's Information and Communications Technology Committee and popular speaker program.

Stewart Lyons, Chief Operating Officer

Stewart Lyons is the Chief Operating Officer and oversees all major operational elements of Mobilicity, from billing and operational support systems to information technology, handset acquisition and logistics, as well as the call centre and customer care. He also is responsible for the regulatory aspects of the Company and, having led the initial formation of the Company, has played a significant role in its equity and debt fundraising efforts. Previously, Mr. Lyons was Executive Vice President of XM Satellite Radio Canada. As the initial employee and co-founder of the venture, he led the launch of the business and regulatory licensing process, developed customer operations including hardware/logistics sourcing and contractual relationships. He also created and led the company's direct and indirect sales teams, oversaw outsourced operational relationships and implemented its subscriber acquisition and retention toolkit. Mr. Lyons's business background also includes working within the financial services industry. While at Scotia Capital Inc., he was an Interest Rate Derivatives Trader, trading several structured derivative products across multiple currencies, as part of the organization's Global Trading group. He served as Director of Operations for the Toronto 2008 Olympic Bid, a fast-paced, entrepreneurial start-up, involving multiple stakeholders and requiring both national and international government coordination. Mr. Lyons is currently a member of the Board of Directors of Canadian Satellite Radio Holdings (TSX:XSR) and several charitable organizations. He has an MBA from the University of Toronto and an LLB from Osgoode Hall Law School.

Joe Prodan, Chief Financial Officer

Joe Prodan is the Chief Financial Officer and oversees the new wireless carrier's finance, legal and human resources departments. He has vast experience working in start-up ventures and subscription-based organizations with recurring revenue streams and long-term customer lifecycles. Mr. Prodan is a former Vice President of Finance at SIRIUS Canada. At SIRIUS, he was responsible for the satellite radio company's financial reporting, business planning and analysis, financial operations and administration. He was a key member in successfully launching the business in Canada. Previously, at Bell ExpressVu, Mr. Prodan was part of the initial management team of the company. His positions included Director of Finance where he oversaw the implementation of billing and various financial systems. Mr. Prodan also held the role of Director, Sales Operations, where he managed the installation, warranty and distribution processes for over 3,000 national and independent dealers. He is a Certified Management Accountant and received a BA (Honours) degree in economics from Wilfrid Laurier University.

Sharyn Gravelle, Vice President of Network Operations

Sharyn Gravelle is Vice President of Network Operations and is responsible for the planning, design, engineering, and build of Mobilicity's AWS/UMTS/HSPA network, and its ongoing operation and maintenance. She specializes in implementing and operating network builds, having provided her technical expertise and proven leadership to several Canadian wireless providers over the years. Prior to joining Mobilicity, Ms. Gravelle was National Director at Radian Communication Services where she managed the telecommunication company's aerial and technical services involved in building-out wireless carrier networks. Previously, as Vice President at Toronto Hydro Telecom Inc., she managed the implementation of the largest wireless mesh network in North America. Ms. Gravelle spent almost a decade as a Director at Microcell, helping the PCS/GSM wireless carrier launch and operating the Fido mobile network. There, she was involved in managing a full range of areas related to the network, such as radio engineering and optimization, site development, program management, field and switch operations and national real estate and property management. While at Morrison Hershfield Limited, Ms. Gravelle helped Clearnet Communications build its iDen wireless network serving as a consulting engineer on everything from municipal consultations and site development to tower engineering and analysis. She also worked at Rogers (Cantel) for seven years, working on the TDMA wireless start-up's RF engineering, site development, civil engineering and construction. Ms. Gravelle received her B.Sc. (Eng) degree from the University of New Brunswick. She is a member of the Association of Professional Engineers and Geoscientists of BC and Professional Engineers Ontario.

Sara Moore, Vice President of Marketing

Sara Moore is Vice President of Marketing and oversees Mobilicity's overall marketing strategy, including customer acquisition and retention, brand management, advertising, promotions, social media and public relations. A seasoned wireless professional, Ms. Moore held senior marketing, strategic planning and communications roles over the course of a decade at Rogers Wireless. As Assistant Vice President of Customer Base Management, she was responsible for lifecycle management, upsell/cross-sell and churn-prevention programs. Prior to joining Mobilicity, Ms. Moore was Head of Marketing at Yahoo Canada, overseeing its marketing and communications, including strategic planning, consumer and trade advertising, research and public relations. Previously, she was Senior Vice President of Marketing and Publicity at Alliance Atlantis Broadcasting where she provided strategic and operational leadership to the marketing and publicity teams across a dozen television networks and multiple digital properties. Ms. Moore received her BA (Honours) degree from Queen's University.

Doug Perry, Vice President of Sales

Doug Perry is Vice President of Sales and is responsible for Mobilicity's sales operations, distribution and retail channel initiatives. A longtime member of the Canadian wireless community, Mr. Perry spent nearly a decade at Rogers Communications in a variety of senior executive sales roles, including Vice President of Sales and Distribution, and Vice President and General Manager at Rogers Wireless. In his earlier days at Rogers' predecessor Cantel, he was Director of Indirect/Channel Distribution and Director of Distribution. He also recently served as Vice President of Corporate Sales for San Francisco-based Salesforce.com, a leading global provider of cloud computing, software-as-a-service and CRM solutions. Mr. Perry received his BA (Honours) from Queen's University. He sits on the Board of Directors for Anaphylaxis Canada.

PRINCIPAL OWNERS

The Company is 100% owned by its parent company, Holdings. Holdings is led by an entity affiliated with Obelysk, a diversified Canadian holding company, and Quadrangle Capital Partners, a global investor in the telecommunications and media sectors.

Founded in 2000, Quadrangle Group is a private investment firm with more than $2 billion in assets under management, based in New York City. Quadrangle focuses on direct investments in media, telecommunications and information-based sectors around the world. The firm seeks to partner with superior management teams in companies where Quadrangle's extensive network of deep industry relationships and significant sector expertise enhance its ability to maximize value and generate strong, stable results.

Obelysk is a diversified group of companies operating in Canada controlled by Canadian businessman John Bitove. The interests in Holdings are controlled by CSRI Inc., an entity with other broadcast related assets licensed by the CRTC.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The Company has entered into a number of transactions with related parties as set forth herein. Management believes that all such transactions have been made on commercially reasonable terms.

The Company entered into transactions with the following entities controlled by the Chairman of the Company:

- Priszm Inc. (Priszm)
- Canadian Satellite Radio Holdings Inc. (CSR)
- CSRI Inc. (CSRI)
- Obelysk Inc. (Obelysk)
- Data and Audio-Visual Enterprise Investments Inc. (DAVE Investments)

The Company's transactions with entities controlled by the Chairman of the Company are as follows:

($)	Amount of transactions	
	2010	**2009**
Rent on leased property and fees paid for services received	1,499,468	1,636,804
Reimbursement of certain expenses incurred while conducting business on the Company's behalf	360,000	396,446
	1,859,468	2,033,250
Balance owing to entities controlled by the Chairman of the Company	102,527	134,545

The Company entered into transactions with the following entities controlled by a significant shareholder of the Company:

- Quadrangle Capital Partners
- Quadrangle

Holdings' and the Company's transactions with entities controlled by a significant shareholder of the Company are as follows:

	Amount of transactions	
	2010	**2009**
Reimbursement of certain expenses incurred while conducting business on the Company's behalf	360,000	360,000
Balance owing to entities controlled by a significant shareholder of the Company	60,000	60,000

The Company issued to Quadrangle Convertible Debentures totalling $19,000,000 during 2011 (2010 - $0; 2009 - $38,939,182). During 2010, Holdings incurred $6,535,654 as interest and related costs related to the Convertible Debentures. Quadrangle was issued 200,000 Class B shares (non-voting) of Holdings during 2009.

The Company entered into transactions with certain key management, which includes employees who are at a Director level and above (executive and non-executive). The total compensation paid to key management is as follows:

	2010	2009
Employee compensation and benefits	3,756,321	2,135,337
Share-based payments	1,312,297	680,000
	5,068,618	2,815,337

DESCRIPTION OF OTHER INDEBTEDNESS

The description of the convertible debentures and debentures below are pro forma for the closing of the Offering and the Additional Offering and the repayment of the Credit Facility. The following is a summary only and is qualified in its entirety by, and should be read in conjunction with, the actual agreements, indentures, debentures and other documents referenced herein, which are or will be made available prior to closing by written request to the Underwriters.

Convertible Debentures

Quadrangle has extended a long-term credit facility to Holdings, approximately $95,000,000 of which may be accessed by Holdings by the issuance of convertible debentures (the "**Quadrangle Facility**"). On May 22, 2009 and again on September 25, 2009, Holdings issued convertible debentures (the "**Convertible Debentures**") for total proceeds of $38.9 million. During January 2011, the Company drew an additional $19.0 million on the Convertible Debentures. In total, the Company has drawn approximately $59.7 million of gross proceeds through the end of March 2011. The Convertible Debentures have characteristics of both debt and equity and, as such, as of December 31, 2010, an amount of $26.0 million was classified as debt and $12.9 million was recorded as equity.

The Convertible Debentures have a final maturity date of September 25, 2018, are convertible into Class B shares at the option of the holder and bear interest at a rate of 12% per annum. On each annual interest payment date, any accrued and unpaid interest on the Convertible Debentures is added to the outstanding principal amount. During 2010, $4.7 million of payment in kind ("**PIK**") interest was capitalized as part of the principal of the Convertible Debentures.

Upon the closing of the Offering and the Additional Offering, it is anticipated that the Quadrangle Facility will be amended in the following manner: i) the approximately $60 million principal amount previously drawn under the Quadrangle Facility will continue to rank pari passu with the Debentures; ii) the approximately $35 million principal amount currently available under the Quadrangle Facility will remain committed to December 31, 2013 and any future drawings on the Quadrangle Facility will be subordinated to the Debentures and amounts previously drawn on the Quadrangle Facility; and iii) Quadrangle will have the option, in its sole discretion, to subordinate any amounts previously drawn under the Quadrangle Facility to the Debentures.

2009 Debentures

On December 17, 2009, the Company issued an aggregate principal amount of $75.0 million of 2009 Debentures, which bear an interest rate of 15% per annum. Concurrent to this Offering, the Company is issuing an additional $20.0 million aggregate principal amount of such debentures, and anticipates making the following amendments, among others, to the 2009 Debentures: i) the inclusion of a restrictive covenant as described under "Description of the Debentures – Restrictive Covenants"; ii) a change in ranking and designation to senior unsecured; and iii) after two years from the Notes Issue Date, each holder of the 2009 Debentures will have the option to receive any further accrued interest on the 2009 Debentures either in cash (at a 13.5% coupon rate) or in further Debenture (at the current coupon rate). The foregoing amendments to the 2009 Debentures are anticipated to be included in the terms of the Additional Debentures.

The 2009 Debentures were issued with 1,500,000 warrants that entitle the holder of each warrant to purchase one Common Share or Class B Share, as the case may be, at a price of $12.00 per share any time prior to September 25, 2018. Additional warrants may also be issued pursuant to the terms of the 2009 Debentures if the Company does not meet certain milestones. See "Description of the Debentures – Warrants".

Interest on the 2009 Debentures is accrued semi-annually on June 30 and December 31 of each year. During 2010, $12.1 million of PIK interest was capitalized as part of the principal of the 2009 Debentures.

The Company is required to repay the full payment amount of the 2009 Debentures along with any accrued interest payable on September 25, 2018.

Inter-Creditor Agreement

The Company, Holdings, Quadrangle, the Debenture Trustee (as defined below) and the trustee under the First Lien Notes will enter into an inter-creditor agreement which will subordinate any future drawings on the Quadrangle Facility to the Debentures and will allow Quadrangle, at its option, to subordinate any amount outstanding under the Quadrangle Facility to other senior unsecured debt.

DESCRIPTION OF THE NOTES

You can find the definitions of certain terms used in this description under the subheading "Certain Definitions." In this description, the "Issuer" refers only to Data and Audio-Visual Enterprises Wireless Inc. and not to any of its subsidiaries and "Restricted Subsidiary" of the Issuer includes Holdings. All references to "dollars," "C$" or "$" in this description refer to Canadian dollars and all references to "US$" refer to United States dollars.

The Issuer will issue the notes under an indenture among itself, the Guarantors and Equity Financial Trust Company, as trustee. The notes have not been and will not be qualified for distribution to the public under the securities laws of any province or territory of Canada. The notes have not been and will not be registered under the United States Securities Act of 1933, as amended, or any state securities laws.

The notes will be represented by a Global Certificate that will be registered in the name of the CDS Nominee and deposited with CDS as a book-entry-only security. Purchasers of the notes will not be entitled to any registration rights. Under the CDS book-entry-only system, the CDS Nominee will be treated as its owner for all purposes. The word "notes", unless the context requires otherwise, refers to the notes represented by the Global Certificate and also refers to book-entry-only interests in the notes. See "– Book-Entry-Only System".

The following description is a summary of the material provisions of the indenture and the Collateral Documents. It does not restate those agreements in their entirety. We urge you to read the indenture and the Collateral Documents because they, and not this description, define your rights as holders of the notes. Copies of the indenture and the Collateral Documents are available as set forth below under "—Additional Information." Certain defined terms used in this description but not defined below under "—Certain Definitions" have the meanings assigned to them in the indenture and the Collateral Documents.

Brief Description of the Notes and the Note Guarantees

The Notes

The notes:

- will be senior secured obligations of the Issuer;
- will be secured by first priority Liens and security interests, subject to Permitted Liens, in the Collateral of the Issuer;
- will be equal in right of payment to all existing and future senior Indebtedness of the Issuer;

- will be effectively senior to all of the Issuer's existing and future unsecured Indebtedness, including the Subordinated Debentures, to the extent of the value of the Collateral, from time to time;
- will be effectively senior to all of the Issuer's existing and future Indebtedness which is secured by Liens and security interests subordinate to the Liens and Security Interests securing the notes to the extent of the value of the Collateral, from time to time;
- will be senior in right of payment to all existing and future subordinated Indebtedness of the Issuer; and
- will be unconditionally guaranteed on a senior secured basis by the Guarantors.

The Note Guarantees

The notes will be guaranteed by Holdings, Dave Leasing and all of the Issuer's future Restricted Subsidiaries.

Each guarantee of the notes:

- will be senior secured obligations of the Guarantors;
- will be secured by first-priority Liens and security interests, subject to Permitted Liens, in the Collateral of the Guarantors;
- will be equal in right of payment to all existing and future senior Indebtedness of the Guarantors;
- will be effectively senior to all of the Guarantors' existing and future unsecured Indebtedness to the extent of the value of the Collateral, from time to time;
- will be effectively senior to all of the Guarantors' existing and future Indebtedness which is secured by Liens and security interests subordinate to the Liens and Security Interests securing the notes to the extent of the value of the Collateral, from time to time;
- will be senior in right of payment to all existing and future subordinated Indebtedness of the Guarantors, including the Subordinated Debentures; and
- will be joint and several with all other guarantees of the notes.

The notes will be guaranteed by Holdings, DAVE Leasing all of the Issuer's future Restricted Subsidiaries. However, under the circumstances described below under the caption "—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries," we will be permitted to designate certain of our Subsidiaries as "Unrestricted Subsidiaries." Our Unrestricted Subsidiaries will not be subject to many of the restrictive covenants in the indenture. Our Unrestricted Subsidiaries will not guarantee the notes and will not have any obligations under the Collateral Documents.

Principal, Maturity and Interest

The Issuer will issue up to $185.0 million in aggregate principal amount of notes in this offering. The Issuer may issue additional notes under the indenture from time to time after this offering. Any issuance of additional notes is subject to all of the covenants in the indenture, including the covenant described below under the caption "—Certain Covenants — Incurrence of Indebtedness." The notes and any additional notes subsequently issued under the indenture will be treated as a single class for all purposes under the indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. The Issuer will issue notes in minimum denominations of $2,000 and integral multiples of $1,000. The notes will mature on the seven year anniversary of the Issue Date.

Interest on the notes will accrue at the rate of 9.5% per annum and will be payable semi-annually in arrears on March 31 and September 30, commencing on September 30, 2011. Interest on overdue principal and interest will accrue at a rate that is 1% higher than the interest rate on the notes. The Issuer will make each interest payment to the holders of record on the immediately preceding March 15 and September 15.

Interest will be computed on the basis of a 365-day year. In the case of any interest period that is shorter than a full semi-annual interest period, interest will be calculated on the basis of a 365-day year and the actual number of days elapsed in that period. The yearly rate of interest that is equivalent to the rate payable under the notes is the rate payable multiplied by the actual number of days in the year and divided by 365 and is disclosed herein solely for the purpose of providing the disclosure required by the Interest Act (Canada).

Transfer and Exchange

A holder may transfer or exchange notes in accordance with the provisions of the indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents in connection with a transfer of notes. Holders will be required to pay all taxes due on transfer. The Issuer will not be required to transfer or exchange any note selected for redemption. Also, the Issuer will not be required to transfer or exchange any note for a period of 15 days before a selection of notes to be redeemed.

Note Guarantees

The notes will be guaranteed by Holdings, DAVE Leasing and each of the Issuer's future Restricted Subsidiaries. These Note Guarantees will be joint and several secured obligations of the Guarantors. The obligations of each Guarantor under its Note Guarantee will be limited as necessary to prevent that Note Guarantee from constituting a fraudulent conveyance under applicable law. See "Risk Factors—Certain bankruptcy and insolvency laws may impair the trustee's ability to enforce remedies under the notes."

A Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with, amalgamate with, or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Issuer or another Guarantor, unless:

(1) immediately after giving effect to that transaction, no Default or Event of Default exists; and

(2) either:

    (a) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation, amalgamation or merger assumes all the obligations of that Guarantor under the indenture, its Note Guarantee and the Collateral Documents pursuant to a supplemental indenture; or

    (b) the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of the indenture.

The Note Guarantee of a Guarantor and its obligations under the Collateral Documents will be released:

(1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger, amalgamation or consolidation) to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Restricted Subsidiary of the Issuer, if the sale or other disposition does not violate the "Asset Sale" provisions of the indenture;

(2) in connection with any sale or other disposition of all of the Capital Stock of that Guarantor to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Restricted Subsidiary of the Issuer, if the sale or other disposition does not violate the "Asset Sale" provisions of the indenture;

(3) if the Issuer designates any Restricted Subsidiary that is a Guarantor to be an Unrestricted Subsidiary in accordance with the applicable provisions of the indenture; or

(4) upon legal defeasance or satisfaction and discharge of the indenture as provided below under the captions "—Legal Defeasance and Covenant Defeasance" and "—Satisfaction and Discharge."

See "—Repurchase at the Option of Holders—Asset Sales."

Security for the Notes

General

Except as noted below, the obligations of the Issuer and the Guarantors under the indenture, the notes, the Note Guarantees and the Collateral Documents will be secured by a Lien that will rank as a first-priority Lien, subject to Permitted Liens, on all of the present and future property of the Issuer and the Guarantors, including but not limited to accounts, chattel paper, documents, equipment, general intangibles, intellectual property, instruments, inventory, property, letter of credit rights, goods, real property, pledges of the Guarantors' equity and all of their rights to the Spectrum Licenses (the "**Collateral**").

On the issuance date of the notes, the Issuer and the Guarantors will enter into the Collateral Documents, which will provide for a grant of a first-priority Lien on the Collateral in favour of the Collateral Agent for its benefit and the benefit of the trustee and the holders of the notes.

Collateral Agent

Pursuant to the Collateral Documents, Equity Financial Trust Company will serve as the collateral agent ("**Collateral Agent**") for the benefit of the trustee and the holders of the notes.

The Collateral Agent will hold (directly or through co-agents or sub-agents), and will be entitled to enforce, all Liens on the Collateral created by the Collateral Documents.

Control over the Collateral

Under the terms of the indenture and the Collateral Documents, the trustee will provide instructions to the Collateral Agent (at the direction of the required number of holders of the outstanding notes (see "—Events of Default")) for the determination of the circumstances and manner in which to dispose of the Collateral, including, but not limited to, the determination of whether to force a sale or foreclose on such Collateral following an Event of Default. Notwithstanding the foregoing sentence, any action taken or not taken without the vote of any holder of outstanding notes will nevertheless be binding on such holder. If the Collateral Agent has asked the holders of the notes for instruction and the holders have not yet responded to such request, the Collateral Agent will be authorized, but not required, to take, and will not in any event have any liability for taking, delaying in taking or failing to take, such actions with regard to a Default or event which the Collateral Agent, in good faith, reasonably believes to be required to promote and protect the interests of the holders of the notes and to preserve the value of the Collateral; provided that, once instructions with respect to such request have been received by the Collateral Agent from the holders of the notes, the actions of the Collateral Agent will be governed thereby and the Collateral Agent will not take any further action which would be contrary thereto.

Proceeds realized by the Collateral Agent from the Collateral will be applied

(1) first, to amounts owing to the Collateral Agent in its capacity as such in accordance with the terms of the Collateral Documents;

(2) second, to amounts owing to the trustee, in its capacity as such, for its fees, costs, and expenses in accordance with the terms of the indenture;

(3) third, ratably to amounts owing to the holders of the notes (in accordance with the terms of the indenture); and

(4) fourth, to the Issuer and/or other Persons entitled thereto.

Regulatory Approval; Enforcement of Lien

Prior to a transfer of the Spectrum Licenses, including upon enforcement of the security interest therein by the Collateral Agent, approval of such transfer must be obtained from Industry Canada. There can be no assurance that such approval will be granted and therefore, it may not be possible for the holders of the notes to enforce their security interest in the Spectrum Licenses.

Additionally, the Collateral has not been appraised in connection with the offering of the notes and the fair market value of the Collateral is subject to fluctuations based on factors that include, among others, the condition of the wireless phone industry, the ability of the Issuer, Holdings and its Subsidiaries to implement their business strategies, the ability to sell the Collateral in an orderly sale, general economic conditions, the availability of buyers, and similar factors. The amount to be received upon a sale of the Collateral, assuming Industry Canada approval were to be obtained, would be dependent on numerous factors, including, but not limited to, the actual fair market value of the Collateral at such time and the timing and the manner of the sale. By its nature, the Collateral may be illiquid and may have no readily ascertainable market value. Likewise, there can be no assurance that the Collateral will be saleable, or, if saleable, that there will not be substantial delays in its liquidation. In the event of a foreclosure, liquidation, bankruptcy, or similar proceeding, there is no assurance that the proceeds from any sale or liquidation of the Collateral will be sufficient to pay the Issuer and the Guarantors' obligations under the notes. Accordingly, there can be no assurance that proceeds of any sale of the Collateral pursuant to the indenture and the Collateral Documents following an Event of Default would be sufficient to satisfy, or would not be substantially less than, amounts due under the notes.

Release of Liens

The Collateral Documents and the indenture provide that the Liens securing the Note Guarantees of any Guarantor will be released automatically when such Note Guarantees are released in accordance with the terms of the indenture (including by virtue of a Guarantor being designated or otherwise becoming an Unrestricted Subsidiary). In addition, the Liens securing the notes will be released automatically

(1) upon defeasance of the indenture as set forth under "– Legal Defeasance and Covenant Defeasance";

(2) upon payment in full of principal, interest and all other obligations (other than contingent indemnity obligations) on the notes issued under the indenture;

(3) with the consent of the requisite holders of the notes in accordance with the provisions under "– Amendment, Supplement and Waiver", including, without limitation, consents obtained in connection with an offer for, or purchase of, notes;

(4) in connection with any disposition of Collateral to any Person other than the Issuer or any of the Restricted Subsidiaries (but excluding any transaction subject to the covenant described under "– Certain Covenants – Merger, Consolidation or Sale of Assets" if the recipient is required to become the obligor on the notes or a guarantor) that is permitted by the indenture (with respect to the Lien on such Collateral); and

(5) upon the sale or disposition of the Collateral pursuant to the exercise of any rights and remedies by the Collateral Agent with respect to the Collateral securing the notes.

Perfection and Non-Perfection of Security in Collateral

The Lien in the Collateral shall be perfected in Ontario, Alberta and British Columbia which is where the Issuer's principal place of business (in the case of Ontario) and material fixed assets are located and in such other jurisdictions in which the Collateral is located from time to time.

To the extent that the Liens in favour of the Collateral Agent in the Collateral are not perfected, the Collateral Agent's rights may only be equal to the rights of the general unsecured creditors of the Issuer and the Guarantors including in the event of a bankruptcy or insolvency. Outside of bankruptcy or insolvency, Liens of certain Lien holders, such as holders of certain statutory or possessory Liens, judgment creditors, or any creditors who obtain a

perfected Lien in any items of Collateral in which the Collateral Agent's Liens are unperfected or in which such unperfected Liens or the perfected Liens under applicable law have priority over the Collateral Agent's Lien, may take priority over the Collateral Agent's interest in the Collateral.
Accordingly, there can be no assurance that the Collateral in which the Collateral Agent's Liens are unperfected or perfected but not first-priority will be available upon the occurrence of an Event of Default to satisfy the obligations under the notes.

Bankruptcy and Insolvency Limitations

In addition to the limitations described elsewhere herein, the rights of the Collateral Agent to enforce remedies are likely to be significantly impaired by the restructuring provisions of applicable Canadian federal bankruptcy, insolvency, and other restructuring legislation in the event the benefit of such legislation is sought with respect to the Issuer or any Guarantor. For example, both the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") contain provisions enabling an insolvent Person to obtain a stay of proceedings against its creditors and others to prepare and file a proposal or plan of arrangement for consideration by all or some of its creditors to be voted on by the various classes of its creditors affected thereby. Such a restructuring proposal, if accepted by the requisite majorities of each affected class of creditors and if approved by the relevant court, would be binding on creditors within any such class who may not otherwise be willing to accept it. Moreover, this legislation permits the insolvent debtor to retain possession and administration of its property, subject to court oversight, even though it may be in default under the applicable debt instrument.

The powers of the court under the BIA and the CCAA have been exercised broadly to protect a restructuring entity from actions taken by creditors and other parties. Accordingly, we cannot predict whether payments under the notes would be made following commencement of or during such proceeding, whether or when the Collateral Agent could exercise its rights under the indenture and the applicable Collateral Documents, or whether and to what extent holders of the notes would be compensated for any delays in payment, if any, of principal, interest and costs, including the fees and disbursements of the Collateral Agent.

Additional Amounts

All amounts paid or credited by the Issuer under or with respect to the notes, or by any Guarantor pursuant to the Guarantees, will be made free and clear of and without withholding or deduction for or on account of any present or future tax, duty, levy, impost, assessment or other governmental charge (including penalties, interest and other liabilities or expenses related thereto) (hereinafter, "**Taxes**") imposed or levied by or on behalf of the Government of Canada or the United States or of any province, territory, state or other political subdivision thereof or by any authority or agency therein or thereof having power to tax (each, a "**Relevant Taxing Jurisdiction**"), unless the Issuer or such Guarantor, as the case may be, is required to withhold or deduct any amount for or on account of Taxes by law or by the interpretation or administration thereof. If the Issuer or any Guarantor is required to withhold or deduct any amount for or on account of any such Taxes from any amount paid or credited under or with respect to the notes or the Guarantees, the Issuer or such Guarantor will pay such additional amounts (the "**Additional Amounts**") as may be necessary so that the net amount received by each owner of a beneficial interest in the notes (an "**owner**" for the purposes of this "Additional Amounts" section) (including Additional Amounts) after such withholding or deduction (including any withholding or deduction in respect of Additional Amounts) will not be less than the amount such owner would have received if such Taxes had not been withheld or deducted; *provided, however*, that Additional Amounts will not be payable to an owner or holder of notes with respect to any Taxes to the extent such Taxes ("**Excluded Taxes**") would not have been imposed but for such owner or holder being an owner or holder:

(1) in the case of Canadian Taxes, with which the Issuer or such Guarantor does not deal at arm's length (within the meaning of the Income Tax Act (Canada)) at the time of making a payment unless the owner or holder is a resident of the United States and is entitled to the benefit of the Canada – United States Tax Convention;

(2) which is subject to such Taxes by reason of such owner or holder being connected with the Relevant Taxing Jurisdiction other than solely by reason of the mere acquisition or holding of notes, the receipt of payments thereunder or the enforcement of the holder's or owner's rights thereunder;

(3) which failed to duly and timely comply with a timely and reasonable request of the Issuer to provide information, documents, certification or other evidence concerning such owner's or holder's nationality, residence, entitlement to treaty benefits, identity or connection with a Relevant Taxing Authority, but only if such owner or holder is legally entitled to comply with such request and only to the extent that due and timely compliance with such request would have resulted in the reduction or elimination of the Taxes in question; or

(4) which is a fiduciary, a partnership or other holder that is not the beneficial owner of a note, if and to the extent that any beneficiary or settlor of such fiduciary, any partner in such partnership or the beneficial owner of such note (as the case may be) would not have been entitled to receive Additional Amounts with respect to the payment in question if such beneficiary, settlor, partner or beneficial owner had been the holder of such note (but only if there is no material cost or expense associated with transferring such note to such beneficiary, settlor, partner or beneficial owner and no restriction on such transfer that is outside the control of such beneficiary, settlor, partner or beneficial owner).

The Issuer or such Guarantor will also (a) make such withholding or deduction and (b) remit the full amount deducted or withheld to the relevant authority in accordance with and in the time required under applicable law.

The Issuer or the Guarantor will furnish the holders of the notes, within 30 days after the date the payment of any Taxes is due pursuant to applicable law, evidence of such payment by the Issuer or such Guarantor. The Issuer and the Guarantors will indemnify and hold harmless each holder and owner from and against (x) any Taxes (other than Excluded Taxes) levied or imposed on such holder or owner as a result of payments or credits made under or with respect to the notes or the Guarantees, and (y) any Taxes (other than Excluded Taxes) so levied or imposed with respect to any indemnification payments under the foregoing clause (x) or this clause (y) such that the net amount received by such holder or owner after such indemnification payments will not be less than the net amount the holder or owner would have received if the Taxes described in clauses (x) and (y) above had not been imposed.

At least 30 days prior to each date on which any payment under or with respect to the notes is due and payable, if the Issuer or any Guarantor will be obligated to pay Additional Amounts with respect to such payment, the Issuer or such Guarantor will deliver to the trustee an officer's certificate stating the fact that such Additional Amounts will be payable and the amounts so payable and will set forth such other information necessary to enable the trustee to pay such Additional Amounts to holders or owners on the payment date. Whenever in the indenture or in this "Description of Notes" there is mentioned, in any context, the payment of principal, premium, if any, redemption price, Change of Control Payment, Asset Sale Offer purchase price, interest or any other amount payable under or with respect to any note, such mention shall be deemed to include mention of the payment of Additional Amounts or indemnification payments to the extent that, in such context, Additional Amounts or indemnification payments are, were or would be payable in respect thereof.

The Issuer and the Guarantors will pay any present or future stamp, court, documentary or other excise or property Taxes, charges or similar levies that arise in any Relevant Taxing Jurisdiction from the execution, delivery or registration of, or enforcement of rights under, the notes, the indenture, any Guarantee or any related document (**"Documentary Taxes"**).

The obligation to pay any Additional Amounts (and any associated indemnification payments) and Documentary Taxes under the terms and conditions described above will survive any termination, defeasance or discharge of the indenture.

Optional Redemption

At any time and from time to time prior to the third anniversary of the Issue Date, upon not less than 30 nor more than 60 days' prior written notice, the Issuer, at its option, may redeem the notes, in whole or in part, at a redemption price equal to the sum of (i) 100% of the principal amount of the notes to be redeemed, *plus* (ii) the greater of (x) the Applicable Premium as of the redemption date and (y) 1%, *plus* (iii) accrued and unpaid interest on such notes to but not including the redemption date (subject to the right of holders of the notes on the relevant record date to receive interest due on an interest payment date falling on or prior to the redemption date).

At any time and from time to time prior to the third anniversary of the Issue Date, upon not less than 30 nor more than 60 days' prior written notice, the Issuer, at its option, may redeem up to 35% of the aggregate principal amount of the notes, in whole or in part, at a redemption price equal to 109.5% of the principal amount of the notes to be redeemed plus accrued and unpaid interest on such notes to but not including the redemption date (subject to the right of holders of the notes on the relevant record date to receive interest due on an interest payment date falling on or prior to the redemption date) with the net cash proceeds of an Equity Offering by Holdings; provided that:

(1) at least 65% of the aggregate principal amount of the notes originally issued under the indenture remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption occurs within 90 days of the date of the closing of such Equity Offering.

On or after the third anniversary of the Issue Date, the Issuer may redeem all or a part of the notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest on the notes redeemed, to the applicable redemption date, if redeemed during the twelve-month periods indicated below, subject to the rights of holders of notes on the relevant record date to receive interest on the relevant interest payment date:

Year	**Percentage**
third to fourth anniversary of the Issue Date..........	104.75%
fourth to fifth anniversary of the Issue Date..........	103.17%
fifth to sixth anniversary of the Issue Date..........	102.375%
sixth anniversary of the Issue Date and thereafter....	100.00%

Unless the Issuer defaults in the payment of the redemption price, interest will cease to accrue on the notes or portions thereof called for redemption on the applicable redemption date.

Redemption for Changes in Withholding Taxes

The Issuer may redeem all, but not less than all, of the notes at any time, upon not less than 30 nor more than 60 days' notice, at 100% of the aggregate principal amount of the notes, together with accrued and unpaid interest on the notes redeemed to the redemption date, if the Issuer have become or would become obligated to pay, on the next date on which any amount would be payable with respect to the notes, any Additional Amounts as a result of a change in the laws or treaties (including any regulations promulgated thereunder) of a Relevant Taxing Jurisdiction, or any change in any official position of any governmental agency, taxing authority or regulatory authority regarding the application or interpretation of such laws or regulations, which change is announced or becomes effective on or after the date of this prospectus (a "**Change in Law**").

Mandatory Redemption

The Issuer is not required to make mandatory redemption or sinking fund payments with respect to the notes.

Repurchase at the Option of Holders

Change of Control

If a Change of Control occurs, each holder of notes will have the right to require the Issuer to repurchase all or any part (equal to $1,000 or an integral multiple of $1,000) of that holder's notes pursuant to a Change of Control Offer on the terms set forth in the indenture. In the Change of Control Offer, the Issuer will offer a Change of Control Payment in cash equal to 101% of the aggregate principal amount of notes repurchased plus accrued and unpaid interest on the notes repurchased to the date of purchase, subject to the rights of holders of notes on the relevant record date to receive interest due on the relevant interest payment date. Within 30 days following any Change of Control, the Issuer will mail a notice to each holder describing the transaction or transactions that constitute the

Change of Control and offering to repurchase notes on the date specified in the notice, which date will be no earlier than 10 days and no later than 60 days from the date such notice is mailed (the "Change of Control Payment Date"), pursuant to the procedures required by the indenture and described in such notice. The Issuer will comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of the indenture by virtue of such compliance.

On the Change of Control Payment Date, the Issuer will, to the extent lawful:

(1) accept for payment all notes or portions of notes properly tendered pursuant to the Change of Control Offer;

(2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all notes or portions of notes properly tendered; and

(3) deliver or cause to be delivered to the trustee the notes properly accepted together with an officer's certificate stating the aggregate principal amount of notes or portions of notes being purchased by the Issuer.

The paying agent will promptly mail to each holder of notes properly tendered the Change of Control Payment for such notes, and the trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each holder a new note equal in principal amount to any unpurchased portion of the notes surrendered, if any. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The provisions described above that require the Issuer to make a Change of Control Offer following a Change of Control will be applicable whether or not any other provisions of the indenture are applicable. Except as described above with respect to a Change of Control, the indenture does not contain provisions that permit the holders of the notes to require that the Issuer repurchase or redeem the notes in the event of a takeover, recapitalization or similar transaction.

The Issuer will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the indenture applicable to a Change of Control Offer made by the Issuer and purchases all notes properly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to the indenture as described above under the caption "—Optional Redemption," unless and until there is a default in payment of the applicable redemption price.

The Change of Control provisions described above may deter certain mergers, takeover bids and other takeover attempts involving the Issuer. The Change of Control feature is a result of negotiations between the underwriters and the Issuer. Subject to the limitations discussed below, the Issuer, could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control, but that could increase the amount of Indebtedness outstanding at such time or otherwise affect the Issuer's capital structure or ability to repay the notes. Restrictions on our ability to incur additional Indebtedness are contained in the covenants "Certain Covenants – Incurrence of Indebtedness" and "Certain Covenants – Limitation on Liens". Such restrictions can only be waived with the consents of the holders of a majority in principal amount of the notes then outstanding. Except for the limitations contained in such covenants, however, the indenture will not contain any covenants or provisions that may afford holders of the notes protection in the event of a highly leveraged transaction.

Asset Sales

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Issuer (or the Restricted Subsidiary, as the case may be) receive consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75% of the consideration received in the Asset Sale by the Issuer or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this provision, each of the following will be deemed to be cash:

(a) any liabilities, as shown on the Issuer's most recent consolidated balance sheet, of the Issuer or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the notes or any Note Guarantee) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases the Issuer or such Restricted Subsidiary from further liability;

(b) any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such transferee that are within 60 days converted by the Issuer or such Restricted Subsidiary into cash or Cash Equivalents, to the extent of the cash or Cash Equivalents received in that conversion; and

(c) any stock or assets of the kind referred to in clauses (1) or (3) of the next paragraph of this covenant.

Within 360 days after the receipt of any Net Proceeds from an Asset Sale, the Issuer (or the applicable Restricted Subsidiary, as the case may be) may:

(x) apply such Net Proceeds at its option:

(1) to acquire all or substantially all of the assets of, or any Capital Stock of, a Permitted Business, if, after giving effect to any such acquisition of Capital Stock, the Permitted Business is or becomes a Restricted Subsidiary of the Issuer;

(2) to make a capital expenditure that is used in a Permitted Business; or

(3) to acquire other assets that are not classified as current assets under GAAP and that are used or useful in a Permitted Business;

(y) to repay the notes; or

(z) enter into a legally binding agreement to apply such Net Proceeds as described in the preceding clause (x) within six months after such agreement is entered into and apply such Net Proceeds in accordance with the terms of such agreement or the provisions of clause (x) above; provided that if such agreement terminates the Issuer shall have until the earlier of (i) 90 days after the date of such termination and (ii) six months after the date of the Asset Sale resulting in such Net Proceeds to effect such an application.

Pending the final application of any Net Proceeds, the Issuer or any Restricted Subsidiary may invest the Net Proceeds in any manner that is not prohibited by the indenture.

Any Net Proceeds from Asset Sales of Collateral that have not been applied in the preceding paragraph since the date of the indenture that exceeds $5.0 million will constitute "**Excess Proceeds**." When there are Excess Proceeds, within five days thereof, the Issuer will make an Asset Sale Offer to all holders of notes and all holders of other First Priority Indebtedness that is *pari passu* with the notes containing provisions similar to those set forth in the indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of notes and such other *pari passu* First Priority Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 101% of the principal amount plus accrued and unpaid interest to the date of purchase, and will be payable in cash. The date of purchase will be no earlier than 20 days and no later than 60 days from the date notice of the Asset Sale Offer is mailed. If any Excess

Proceeds remain after consummation of an Asset Sale Offer, the Issuer or any Restricted Subsidiary may use those Excess Proceeds for any purpose not otherwise prohibited by the indenture. If the aggregate principal amount of notes and other *pari passu* First Priority Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the trustee will select the notes and such other *pari passu* First Priority Indebtedness to be purchased on a *pro rata* basis. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

The Issuer will comply with the requirements of any securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of the indenture, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of the indenture by virtue of such compliance.

Future agreements governing the Issuer's other Indebtedness may contain prohibitions of certain events, including events that would constitute a Change of Control or an Asset Sale. The exercise by the holders of notes of their right to require the Issuer to repurchase the notes upon a Change of Control or an Asset Sale could cause a default under these other agreements, even if the Change of Control or Asset Sale itself does not, due to the financial effect of such repurchases on the Issuer. In the event a Change of Control or Asset Sale occurs at a time when the Issuer is prohibited from purchasing notes, the Issuer could seek the consent of its lenders to the purchase of notes or could attempt to refinance the borrowings that contain such prohibition. If the Issuer does not obtain a consent or repay those borrowings, the Issuer will remain prohibited from purchasing notes. In that case, the Issuer's failure to purchase tendered notes would constitute an Event of Default under the indenture which could, in turn, constitute a default under the other indebtedness. Finally, the Issuer's ability to pay cash to the holders of notes upon a repurchase may be limited by the Issuer's then existing financial resources. See "Risk Factors—The Company may not have the ability to raise the funds necessary to finance the change of control offer required by the indentures governing the Notes and Debentures."

Selection and Notice

If less than all of the notes are to be redeemed or repurchased pursuant to a Change of Control Offer or Asset Sale Offer at any time, the trustee will select notes for redemption on a pro rata basis unless otherwise required by law or applicable stock exchange requirements.

If any note is to be redeemed or repurchased pursuant to a Change of Control Offer or Asset Sale Offer in part only, the notice of redemption or repurchase that relates to that note will state the portion of the principal amount of that note that is to be redeemed or repurchased. A new note in principal amount equal to the unredeemed or unpurchased portion of the original note will be issued in the name of the holder of notes upon cancellation of the original note. Notes called for redemption or repurchase pursuant to a Change of Control Offer or Asset Sale Offer become due on the date fixed for redemption or repurchase. On and after the redemption or repurchase date, interest ceases to accrue on notes or portions of notes called for redemption.

Certain Covenants

Restricted Payments

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Issuer's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger, amalgamation or consolidation involving the Issuer or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Issuer or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Issuer and other than dividends or distributions payable to the Issuer or a Restricted Subsidiary of the Issuer);

(2) purchase, redeem or otherwise acquire or retire for value any Equity Interests of the Issuer or any direct or indirect parent of the Issuer (other than any such Equity Interests owned by the Issuer or any Restricted Subsidiary of the Issuer);

(3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Issuer or any Guarantor that is contractually subordinated to the notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among the Issuer and any of its Restricted Subsidiaries), except a payment of interest or principal at the Stated Maturity thereof; or

(4) make any Restricted Investment

(all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as "**Restricted Payments**"),

unless, at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(2) the Issuer would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable four-quarter period, have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the test set forth in the first clause of the definition of Permitted Debt and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries since the date of the indenture (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6) and (7) of the next succeeding paragraph), is less than the sum, without duplication, of:

    (a) the difference between (i) Consolidated EBITDA of Holdings for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the date of the indenture to the end of Holdings' most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment and (ii) 150% of the Consolidated Interest Expense of Holdings for the period (taken as one accounting period) from the beginning of the first fiscal quarter commencing after the date of the indenture to the end of Holdings most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment; plus

    (b) Total Incremental Equity; *plus*

    (c) to the extent that any Restricted Investment that was made after the date of the indenture is sold for cash or otherwise liquidated or repaid for cash, the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any); plus

    (d) 50% of any dividends received by the Issuer or a Restricted Subsidiary of the Issuer after the date of the indenture from an Unrestricted Subsidiary of the Issuer, to the extent that such dividends were not otherwise included in the Consolidated Net Income of Holdings for such period; plus

    (e) to the extent that any Unrestricted Subsidiary of the Issuer designated as such after the date of the indenture is redesignated as a Restricted Subsidiary after the date of the indenture, the Fair Market Value of the Issuer's Investment in such Subsidiary as of the date of such redesignation.

So long as no Default has occurred and is continuing or would be caused thereby, the preceding provisions will not prohibit:

(1) the payment of any dividend or distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend, distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of the indenture;

(2) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of Holdings) of Equity Interests of Holdings (other than Disqualified Stock) or from the substantially concurrent contribution of common equity capital to Holdings; provided that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded from clause (3)(b) of the preceding paragraph;

(3) the repurchase, repayment, prepayment, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Issuer or any Guarantor that is contractually subordinated to the notes or to any Note Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(4) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Issuer (other than Holdings) to the holders of its Equity Interests on a pro rata basis;

(5) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of Holdings, the Issuer or any Restricted Subsidiary of the Issuer held by any current or former officer, director or employee of Holdings, the Issuer or any of its Restricted Subsidiaries pursuant to any equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests may not exceed $2.5 million in any twelve-month period;

(6) the repurchase of Equity Interests deemed to occur upon the exercise of stock options to the extent such Equity Interests represent a portion of the exercise price of those stock options;

(7) payments made to purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of the Issuer or a Guarantor that is contractually subordinated to the notes or to any Guarantee, in each case, pursuant to provisions requiring such Person to offer to purchase, redeem, defease or otherwise acquire or retire for value such subordinated Indebtedness upon the occurrence of a "change of control" or with the proceeds of "asset sales" as defined in the agreements or instruments governing such subordinated Indebtedness; provided however, that a Change of Control Offer or Asset Sale Offer, as applicable, has been made and the Issuer has purchased all notes validly tendered in connection with that Change of Control Offer or Asset Sale Offer;

(8) payments or distributions to dissenting stockholders pursuant to applicable law pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of the indenture applicable to mergers, consolidations and transfers of all or substantially all of our property or assets; and

(9) other Restricted Payments in an aggregate amount not to exceed $2.5 million million since the date of the indenture.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Issuer or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this covenant will be determined in good faith (a) in the case of assets or securities valued at $10 million or less, by a senior financial officer of the Issuer set forth in a certificate to the trustee from such officer, and (b) in the case of assets or securities valued at more than $10 million, by the Issuer's Board of Directors and set forth in an officers' certificate delivered to the trustee. The Board of Directors' determination must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing if the Fair Market Value exceeds $25 million.

Incurrence of Indebtedness

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**") any Indebtedness (including Acquired Debt), and Holdings will not issue any Disqualified Stock.

The first paragraph of this covenant will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "**Permitted Debt**"):

(1) the incurrence by the Issuer or any Guarantor of additional Indebtedness provided that the aggregate principal amount of Indebtedness incurred under this clause (1) together with the aggregate principal amount of notes, Subordinated Debentures (excluding any amounts incurred under clause (12)), any Convertible Debentures which have not been subordinated pursuant to their terms (excluding any amounts incurred under clause (15)) and First Priority Indebtedness incurred pursuant to clause (11) may not exceed the greater of $350 million and 4.5 times Holdings' Consolidated EBITDA for the four most recently completed fiscal quarters at any one time outstanding;

(2) the incurrence by the Issuer and its Restricted Subsidiaries of the Existing Indebtedness;

(3) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case, incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Issuer or any of its Restricted Subsidiaries, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this clause (3), not to exceed $10 million at any one time outstanding;

(4) the incurrence by the Issuer or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted by the indenture to be incurred under clauses (1), (2), (3), (10), (11), (12), (15), (16) or (17) of this paragraph;

(5) the incurrence by the Issuer or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Issuer and any of its Restricted Subsidiaries; *provided, however*, that:

(a) if the Issuer or any Guarantor is the obligor on such Indebtedness and the payee is not the Issuer or a Guarantor, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the notes, in the case of the Issuer, or the Note Guarantee, in the case of a Guarantor; and

(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Issuer or a Restricted Subsidiary of the Issuer and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Issuer or a Restricted Subsidiary of the Issuer, will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Issuer or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (5);

(6) the incurrence by the Issuer or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business and not for speculative purposes;

(7) the guarantee by the Issuer or any of the Guarantors of Indebtedness of the Issuer or a Restricted Subsidiary of the Issuer that was permitted to be incurred by another provision of this covenant; *provided* that if the Indebtedness being guaranteed is subordinated to or *pari passu* with the notes, then the guarantee shall be subordinated or *pari passu*, as applicable, to the same extent as the Indebtedness guaranteed;

(8) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance or surety bonds or other reimbursement obligations in the ordinary course of business;

(9) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five business days;

(10) the incurrence by the Issuer or any of its Restricted Subsidiaries of Indebtedness to the extent the net proceeds thereof are promptly deposited to defease all outstanding notes as described below under the caption "—Legal Defeasance and Covenant Defeasance"; .

(11) the incurrence by the Issuer or any of its Restricted Subsidiaries of First Priority Indebtedness provided that following such incurrence, the aggregate principal amount of First Priority Indebtedness does not exceed the greater of (a) $200 million and (b) three times Holdings' Consolidated EBITDA for the four most recently completed fiscal quarters at any one time outstanding and provided further that such Indebtedness could have been incurred under clause (1);

(12) the incurrence by the Issuer or any of its Restricted Subsidiaries of Subordinated Debentures which have been issued in payment of accrued interest under the Subordinated Debentures;

(13) the incurrence by the Issuer or any of its Restricted Subsidiaries of unsecured convertible debt securities, not to exceed in the aggregate of $100 million at any one time outstanding;

(14) the issuance by the Issuer or any of its Restricted Subsidiaries of shares of preferred stock;

(15) the incurrence by the Issuer or any of its Restricted Subsidiaries of Convertible Debentures which have been issued in payment of accrued interest under the Convertible Debentures;

(16) the incurrence by the Issuer or any of its Restricted Subsidiaries of the New Convertible Debentures; and

(17) incurrence by the Issuer and the Guarantors of Indebtedness represented by the notes and the related Note Guarantees to be issued on the date of the indenture.

The Issuer will not incur, and will not permit any Guarantor to incur, any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Issuer or such Guarantor unless such Indebtedness is also contractually subordinated in right of payment to the notes and the applicable Note Guarantee on substantially identical terms; provided, however, that no Indebtedness will be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Issuer solely by virtue of being unsecured or by virtue of being secured on a first or junior Lien basis.

For purposes of determining compliance with this "Incurrence of Indebtedness" covenant, in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (17) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Issuer will be permitted to classify such item of Indebtedness on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness, in any manner that complies with this covenant, including by allocation to more than one other type of Indebtedness. The outstanding principal amount of any particular Indebtedness shall be counted only once and any obligations arising under any Guarantee, Lien, letter of credit or similar instrument supporting such Indebtedness shall not be double counted. Notwithstanding any other provision of this covenant, the maximum amount of Indebtedness that the Issuer or any Restricted Subsidiary may incur pursuant to this covenant shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount; and

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness.

Liens

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien (other than Permitted Liens) of any kind on any Collateral now owned or hereafter acquired.

Limitation on Sale and Leaseback Transactions

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; provided that the Issuer and any Guarantor may enter into a sale and leaseback transaction if:

(1) an Issuer or that Guarantor, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the Consolidated Leverage Coverage Ratio test in the first paragraph of the covenant described above under the caption "— Incurrence of Indebtedness" and (b) incurred a Lien to secure such Indebtedness pursuant to the covenant described above under the caption "—Liens;" and

(2) the transfer of assets in that sale and leaseback transaction is permitted by, and the Issuer applies the proceeds of such transaction in compliance with, the covenant described above under the caption "—Repurchase at the Option of Holders—Asset Sales."

Dividend and Other Payment Restrictions Affecting Subsidiaries

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to the Issuer or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(2) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

(1) agreements governing Existing Indebtedness as in effect on the date of the indenture and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; provided that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in those agreements on the date of the indenture;

(2) the indenture, the notes, the Note Guarantees and the Collateral Documents;

(3) applicable law, rule, regulation or order;

(4) any agreement or instrument governing Indebtedness or Capital Stock of a Person acquired by, or merged, consolidated or otherwise combined with or into, the Issuer or any of its Restricted Subsidiaries as in effect at the time of such acquisition, merger, consolidation or other combination (except to the extent such

Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the indenture to be incurred;

(5) customary non-assignment provisions in leases, contracts and licenses or related documents entered into in the ordinary course of business;

(6) purchase money obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased of the nature described in clause (3) of the preceding paragraph;

(7) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending the sale or other disposition;

(8) Permitted Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(9) Liens permitted to be incurred under the provisions of the covenant described above under the caption "—Liens" that limit the right of the debtor to dispose of the assets subject to such Liens;

(10) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into with the approval of the Issuer's Board of Directors, which limitation is applicable only to the assets that are the subject of such agreements; and

(11) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

Merger, Consolidation or Sale of Assets

Holdings will not, directly or indirectly: (1) consolidate, amalgamate or merge with or into another Person (whether or not Holdings is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(1) either: (a) Holdings is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than Holdings) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation organized or existing under the laws of Canada, the United States, any province, territory or any state thereof or the District of Columbia;

(2) the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of Holdings under the notes, the indenture and the Collateral Documents;

(3) immediately after such transaction, no Default or Event of Default exists;

(4) Holdings or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings), or to which such sale, assignment, transfer, conveyance or other disposition has been made would, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, be permitted to incur at least $1.00 of additional Indebtedness pursuant to the test set forth in the first clause of the definition of Permitted Debt;

(5) each surviving Guarantor shall have by supplemental indenture and Collateral Documents confirmed that its Note Guarantee shall apply to Holdings or the Person formed by or surviving any such consolidation, amalgamation or merger (if other than Holdings) and its obligations under the Collateral Documents shall remain in full force and effect; and

(6) the Issuer shall have delivered to the trustee an officers certificate and opinion of counsel, each stating that such consolidation, merger or transfer and such supplemental indenture and Collateral Documents (if any) comply with the indenture and Collateral Documents.

In addition, Holdings will not, directly or indirectly, lease all or substantially all of the properties and assets of it, the Issuer and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to any other Person.

This "Merger, Consolidation or Sale of Assets" covenant will not apply to:

(1) a merger of Holdings with an Affiliate solely for the purpose of reincorporating Holdings in another jurisdiction that is in Canada or the United States; or

(2) any consolidation, amalgamation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among the Issuer and its Restricted Subsidiaries.

Transactions with Affiliates

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each, an "**Affiliate Transaction**"), unless:

(1) the Affiliate Transaction is on terms that are no less favorable to the Issuer or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person; and

(2) the Issuer delivers to the trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5 million, a resolution of the Board of Directors of the Issuer set forth in an officer's certificate certifying that such Affiliate Transaction complies with this covenant and, if an opinion meeting the requirements set forth in clause (b) below has not been obtained, that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Issuer who have no direct financial interest in such Affiliate Transaction (other than as a stockholder of Holdings); and

(b) with respect to (x) any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10 million, (y) an Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5 million where none of the members of the Issuer's Board of Directors qualify as having no direct financial interest in such Affiliate Transaction (other than as a stockholder of Holdings), an opinion as to the fairness to the Issuer or such Restricted Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing in the United States or Canada.

The following items will not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

(1) any transaction by the Issuer or any Restricted Subsidiary with an Affiliate related to the purchase, sale or distribution of products in the ordinary course of business, which has been approved by a majority of the members of the Board of Directors who are disinterested with respect to such transaction;

(2) any employment agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by the Issuer or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;

(3) transactions between or among the Issuer and/or its Restricted Subsidiaries;

(4) transactions with a Person (other than an Unrestricted Subsidiary of the Issuer) that is an Affiliate of the Issuer solely because the Issuer owns, directly or through a Restricted Subsidiary, an Equity Interest in, or controls, such Person;

(5) payment of reasonable compensation or fees to directors or officers of Holdings and its Subsidiaries;

(6) any sale or issuance of Equity Interests (other than Disqualified Stock) of Holdings to Affiliates of Holdings;

(7) Restricted Payments that do not violate the provisions of the indenture described above under the caption "—Restricted Payments;

(8) a management fee in lieu of the payment or reimbursement of travel and administrative expenses or other costs to each of DAVE Investments, Quadrangle Capital Partners II LLP and other shareholders of Holdings which, when aggregated, do not exceed $750,000 in any fiscal year of Holdings; and

(9) transactions or agreements in existence on the date of the indenture, including the Quadrangle Facility and any transactions or agreements among Holdings and the Issuer, on the one hand, and Dave Leasing, on the other hand (and extensions or amendments thereof on terms which are not materially less favorable to the Issuer and/or those Restricted Subsidiares that are party thereto than the terms of any such transaction or agreement as in existence on the Issue Date).

Business Activities

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, engage in any business other than Permitted Businesses, except to such extent as would not be material to the Issuer and its Restricted Subsidiaries taken as a whole.

Designation of Restricted and Unrestricted Subsidiaries

The Board of Directors of the Issuer may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by the Issuer and its Restricted Subsidiaries in the Subsidiary designated as Unrestricted will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under the covenant described above under the caption "—Restricted Payments" or under one or more clauses of the definition of Permitted Investments, as determined by the Issuer. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of the Issuer may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.

Any designation of a Subsidiary of the Issuer as an Unrestricted Subsidiary will be evidenced to the trustee by filing with the trustee a certified copy of a resolution of the Board of Directors giving effect to such designation and an officer's certificate certifying that such designation complied with the preceding conditions and was permitted by the covenant described above under the caption "—Restricted Payments." If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of the indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Issuer as of such date and, if such Indebtedness is not permitted to be incurred as of such date under the covenant described under the caption "— Incurrence of Indebtedness" the Issuer will be in default of such covenant. The Board of Directors of the Issuer may at any time designate any Unrestricted

Subsidiary to be a Restricted Subsidiary of the Issuer; provided that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Issuer of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under the test set forth in clause (1) of the definition of Permitted Debt calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Future Guarantors

The Issuer will cause each Restricted Subsidiary to execute and deliver to the trustee within 60 days a Note Guarantee pursuant to which such Guarantor will unconditionally guarantee, on a joint and several basis, the full and prompt payment of the principal, premium, if any, interest and liquidated damages, if any, on the notes on a senior basis; provided that any Restricted Subsidiary that constitutes an Immaterial Subsidiary need not become a Subsidiary Guarantor until such time as it ceases to be an Immaterial Subsidiary. Each Restricted Subsidiary that becomes a Subsidiary Guarantor after the date of issuance of the notes will also become a party to the Collateral Documents and will take such actions are reasonably necessary or advisable to grant the Collateral Agent for the benefit of the holders of the notes and, the trustee, a perfected Lien on any Collateral held by such Restricted Subsidiary, subject to Permitted Liens.

Payments for Consent

The Issuer will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any holder of notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the indenture or the notes unless such consideration is offered to be paid and is paid to all holders of the notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

Compliance Certificate

The Issuer and each Guarantor shall deliver to the trustee, within 90 days after the end of each fiscal year, an officer's certificate stating that to the best of such officer's knowledge, the Issuer and Guarantors have complied with each covenant contained in the indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of the indenture.

Reports

Holdings will furnish the following disclosure documents to the holders of notes and the trustee (which furnishing may be done by posting such information on its website (which may be a secured area of the website accessible only to holders of the notes and qualified prospective investors in the notes)):

(1) within 60 days after the end of each quarterly fiscal period in each fiscal year of Holdings (other than the last quarterly fiscal period of each such fiscal year) an unaudited consolidated balance sheet of Holdings and its Subsidiaries as at the end of such quarter; unaudited consolidated statements of income and cash flow of Holdings and its Subsidiaries for such quarter and a "Management's Discussion and Analysis of Financial Condition and Results of Operations" for such quarter;

(2) within 90 days after the end of each fiscal year of Holdings an audited consolidated balance sheet of Holdings and its Subsidiaries as at the end of such year; audited consolidated statements of income and cash flow of Holdings and its Subsidiaries and a "Management's Discussion and Analysis of Financial Condition and Results of Operations" for such fiscal year; and

(3) within 10 days following an event that results in a Material Adverse Effect; a report with a description of such event.

In addition, within five days after delivery by Holdings of the documents set forth in clause (1) and (2) above, Holdings will hold an investor conference call to discuss such documents.

Events of Default and Remedies

Each of the following is an "*Event of Default*":

(1) default for 30 days in the payment when due of interest on the notes;

(2) default in the payment when due (at maturity, upon redemption, upon repurchase as required by the indenture or otherwise) of the principal of, or premium, if any, on, the notes;

(3) failure by the Issuer or any of its Restricted Subsidiaries to comply with the provisions described under the captions "Additional Amounts," "—Repurchase at the Option of Holders—Change of Control," "—Repurchase at the Option of Holders—Asset Sales," or "—Certain Covenants—Merger, Consolidation or Sale of Assets;"

(4) failure by the Issuer or any of its Restricted Subsidiaries for 60 days after notice to the Issuer by the trustee or the holders of at least 25% in aggregate principal amount of the notes then outstanding voting as a single class to comply with any of the other agreements in the indenture or the Collateral Documents;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Issuer or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Issuer or any of its Restricted Subsidiaries), whether such Indebtedness or Guarantee now exists, or is created after the date of the indenture, if that default:

(a) is caused by a failure to pay principal of, or interest or premium, if any, on, such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a "**Payment Default**"); or

(b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates $7.5 million or more;

(6) failure by the Issuer or any of its Restricted Subsidiaries to pay final non-appealable judgments for the payment of money entered by a court or courts of competent jurisdiction aggregating in excess of $7.5 million, which judgments are not paid, discharged or stayed for a period of 60 days;

(7) except as permitted by the indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect, or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee;

(8) any Collateral Document ceases to be in full force and effect (except as permitted by the terms of the indenture or Collateral Documents or other than as a result of the action or inaction of the Collateral Agent) for a period of 30 consecutive days after the Issuer receives notice thereof;

(9) certain events of bankruptcy or insolvency described in the indenture with respect to the Issuer or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary; and

(10) any Collateral Document is declared null and void in a judicial proceeding or the Issuer or any Guarantor denies or disaffirms its obligations under any Collateral Document.

In the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Issuer, any Restricted Subsidiary of the Issuer that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Issuer that, taken together, would constitute a Significant Subsidiary, all outstanding notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the trustee or the holders of at least 25% in aggregate principal amount of the then outstanding notes may declare all the notes to be due and payable immediately.

Subject to certain limitations, holders of a majority in aggregate principal amount of the then outstanding notes may direct the trustee in its exercise of any trust or power. The trustee may withhold from holders of the notes notice of any continuing Default or Event of Default if it determines that withholding notice is in their interest, except a Default or Event of Default relating to the payment of principal, interest or premium.

Subject to the provisions of the indenture relating to the duties of the trustee, in case an Event of Default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any holders of notes unless such holders have offered to the trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal, premium, if any, or interest when due, no holder of a note may pursue any remedy with respect to the indenture or the notes unless:

(1) such holder has previously given the trustee notice that an Event of Default is continuing;

(2) holders of at least 25% in aggregate principal amount of the then outstanding notes have requested the trustee to pursue the remedy;

(3) such holders have offered the trustee reasonable security or indemnity against any loss, liability or expense;

(4) the trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) holders of a majority in aggregate principal amount of the then outstanding notes have not given the trustee a direction inconsistent with such request within such 60-day period.

The holders of a majority in aggregate principal amount of the then outstanding notes by notice to the trustee may, on behalf of the holders of all of the notes, rescind an acceleration or waive any existing Default or Event of Default and its consequences under the indenture except a continuing Default or Event of Default in the payment of interest or premium on, or the principal of, the notes.

In the case of any Event of Default occurring by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Issuer with the intention of avoiding payment of the premium that the Issuer would have had to pay if the Issuer then had elected to redeem the notes pursuant to the optional redemption provisions of the indenture, an equivalent premium will become and be immediately due and payable to the extent permitted by law upon the acceleration of the notes.

The Issuer are required to deliver to the trustee annually a statement regarding compliance with the indenture. Upon becoming aware of any Default or Event of Default, the Issuer is required to deliver to the trustee a statement specifying such Default or Event of Default.

No Personal Liability of Directors, Officers, Employees and Stockholders

No director, officer, employee, incorporator or stockholder of the Issuer or any Guarantor, as such, will have any liability for any obligations of the Issuer or the Guarantors under the notes, the indenture, the Note Guarantees, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes. The waiver may not be effective to waive liabilities under the United States federal securities laws.

Legal Defeasance and Covenant Defeasance

The Issuer may at any time, at its option, elect to have all of its obligations discharged with respect to the outstanding notes and all obligations of the Guarantors discharged with respect to their Note Guarantees ("**Legal Defeasance**") except for:

(1) the rights of holders of outstanding notes to receive payments in respect of the principal of, or interest or premium on, such notes when such payments are due from the trust referred to below;

(2) the Issuer's obligations with respect to the notes concerning issuing temporary notes, registration of notes, mutilated, destroyed, lost or stolen notes and the maintenance of an office or agency for payment and money for security payments held in trust;

(3) the rights, powers, trusts, duties and immunities of the trustee, and the Issuer's and the Guarantors' obligations in connection therewith; and

(4) the Legal Defeasance provisions of the indenture.

In addition, the Issuer may, at its option and at any time, elect to have the obligations of the Issuer and the Guarantors released with respect to certain covenants (including its obligation to make Change of Control Offers and Asset Sale Offers) that are described in the indenture ("**Covenant Defeasance**") and thereafter any omission to comply with those covenants will not constitute a Default or Event of Default with respect to the notes. In the event Covenant Defeasance occurs, certain events (not including non-payment, bankruptcy, receivership, rehabilitation and insolvency events) described under "Events of Default and Remedies" will no longer constitute an Event of Default with respect to the notes.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) the Issuer must irrevocably deposit with the trustee, in trust, for the benefit of the holders of the notes, cash in Canadian dollars, non-callable Government Securities, or a combination of cash in Canadian dollars and non-callable Government Securities, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank in the United States or Canada, appraisal firm or firm of independent public accountants, to pay the principal of, or interest and premium, if any, on, the outstanding notes on the stated maturity thereof or on the applicable redemption date, as the case may be, and the Issuer must specify whether the notes are being defeased to such stated maturity or to a particular redemption date;

(2) in the case of Legal Defeasance or Covenant Defeasance, the Issuer must deliver to the trustee an opinion of counsel confirming that the holders and beneficial owners of the outstanding notes will not recognize income, gain or loss for Canadian federal, provincial, territorial income tax or other tax purposes as a result of such Legal Defeasance or Covenant Defeasance, as applicable, and will be subject to Canadian federal, provincial or territorial income tax and other tax on the same amounts, if any, in the same manner and at the same times as would have been the case if such Legal Defeasance or Covenant Defeasance, as the case may be, had not occurred (which condition may not be waived by any holder of outstanding notes or the trustee);

(3) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(4) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than the indenture) to which the Issuer or any of its Subsidiaries is a party or by which the Issuer or any of its Subsidiaries is bound;

(5) the Issuer must deliver to the trustee an officer's certificate stating that the deposit was not made by the Issuer with the intent of preferring the holders of notes over the other creditors of the Issuer with the intent of defeating, hindering, delaying or defrauding any creditors of the Issuer or others; and

(6) the Issuer must deliver to the trustee an officer's certificate and an opinion of counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Amendment, Supplement and Waiver

Except as provided in the next two succeeding paragraphs, the indenture, the notes, the Note Guarantees or the Collateral Documents may be amended or supplemented with the consent of the holders of at least a majority in aggregate principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes), and any existing Default or Event of Default or compliance with any provision of the indenture, the notes, the Note Guarantees or the Collateral Documents may be waived with the consent of the holders of a majority in aggregate principal amount of the then outstanding notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, notes).

Without the consent of each holder of notes affected, an amendment, supplement or waiver may not:

(1) reduce the principal amount of notes whose holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any note or alter the provisions with respect to the redemption of the notes (other than provisions relating to the covenants described above under the caption "—Repurchase at the Option of Holders");

(3) reduce the rate of or change the time for payment of interest, including default interest, on any note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium, if any, on, the notes (except a rescission of acceleration of the notes by the holders of at least a majority in aggregate principal amount of the then outstanding notes and a waiver of the payment default that resulted from such acceleration);

(5) make any note payable in money other than that stated in the notes;

(6) make any change in the provisions of the indenture relating to waivers of past Defaults or the rights of holders of notes to receive payments of principal of, or interest or premium, if any, on, the notes;

(7) waive a redemption payment with respect to any note (other than a payment required by one of the covenants described above under the caption "—Repurchase at the Option of Holders");

(8) release any Guarantor from any of its obligations under its Note Guarantee or the indenture, except in accordance with the terms of the indenture;

(9) make any change in the preceding amendment and waiver provisions;

(10) make any note payable in money other than in Canadian dollars;

(11) impair the right to institute suit for the enforcement of any payment on or with respect to the notes or the Note Guarantees; or

(12) amend, change, modify or waive the obligation of the Issuer to make and consummate a Change of Control Offer after the obligation to make such a Change of Control Offer has arisen.

Notwithstanding the preceding, without the consent of any holder of notes, the Issuer, the Guarantors, the trustee and the Collateral Agent may amend or supplement the indenture, the notes, the Note Guarantees or the Collateral Documents: