(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 Issuer's or a Guarantor's obligations to holders of notes and Note Guarantees in the case of a merger, amalgamation or consolidation or sale of all or substantially all of the Issuer's or such Guarantor's assets, as applicable;

(4) to make any change that would provide any additional rights or benefits to the holders of notes or that does not adversely affect the legal rights under the indenture of any such holder;

(5) to conform the text of the indenture, the Note Guarantees, the notes or the Collateral Documents to any provision of this Description of Notes to the extent that such provision in this Description of Notes was intended to be a verbatim recitation of a provision of the indenture, the Note Guarantees, the notes or the Collateral Documents;

(6) to provide for the issuance of additional notes in accordance with the limitations set forth in the indenture as of the date of the indenture;

(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 the 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 the 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 the indenture; or

(11) provide for the release or addition of Collateral in accordance with the terms of the indenture and the Collateral.

Satisfaction and Discharge

The indenture will be discharged and will cease to be of further effect as to all notes issued thereunder, when:

(1) either:

(a) all notes that have been authenticated, except lost, stolen or destroyed notes that have been replaced or paid and notes for whose payment money has been deposited in trust and thereafter repaid to the Issuer, 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 Issuer 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 of cash in Canadian dollars and non-callable Government Securities, in 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 and 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 the 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 Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound;

(3) the Issuer or any Guarantor has paid or caused to be paid all sums payable by it under the indenture; and

(4) the Issuer has delivered irrevocable instructions to the trustee under the 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 Issuer must deliver an officer's certificate and an opinion of counsel to the trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Concerning the Trustee

If the trustee becomes a creditor of the Issuer or any Guarantor, the indenture limits the right of the trustee to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The trustee will be permitted to engage in other transactions; however, if it acquires any conflicting interest it must eliminate such conflict within 90 days or resign.

The holders of a majority in aggregate principal amount of the then outstanding notes will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee, subject to certain exceptions. The indenture provides that in case an Event of Default occurs and is continuing, the trustee will be required, in the exercise of its power, to use the degree of care of a prudent man in the conduct of his own affairs. Subject to such provisions, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any holder of notes, unless such holder has offered to the trustee security and indemnity satisfactory to it against any loss, liability or expense.

Additional Information

Anyone who receives this Offering Circular may obtain a copy of the indenture and the Collateral Documents, without charge, by writing to Data & Audio-Visual Enterprises Wireless Inc., Suite 2300, Canada Trust Tower, Brookfield Place, 161 Bay Street, Toronto, ON, M5J 2S1, Attention Chief Financial Officer.

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.

Book- Entry-Only System

The notes will be deposited with CDS, will be registered in the name of the CDS Nominee as a book-entry-only security (the "**Security**"), and will be identified by an International Securities Identification Number. CDS acts as a securities intermediary on behalf of its participants ("**Participants**") that use the services of CDS and act on their own behalf or on behalf of beneficial owners of securities (who are the clients or customers of the Participants). Interests in Securities are represented through book-entry accounts ("**Book Accounts**") established and maintained by CDS on its records for its Participants. The notes will be represented by a Global Certificate that will be registered in the name of the CDS Nominee and deposited with CDS on the issue date. Thereafter, CDS will credit the Book Accounts of those Participants with interests in the notes in accordance with instructions received from or on behalf of the Issuer. Except as provided below, a purchaser of notes will not be shown on the records maintained by CDS, and neither the purchaser nor any Participant will be entitled to receive a certificate or other instrument from the Issuer or CDS evidencing that purchaser's or Participant's ownership of or interest in notes. A purchaser of notes will receive only a customer confirmation from the Participant from or through whom the notes are purchased in accordance with the practices and procedures of that Participant. Any subsequent purchase or sale of notes will have to be made through a Participant.

As the registered holder of the Security, the CDS nominee will be considered to be the sole owner and holder of the notes represented by the Global Certificate for all purposes under the indenture and the notes. Principal of, premium, if any, and interest on the notes will be payable by the Issuer solely to the CDS Nominee. Neither the Issuer nor the trustee will have any responsibility or liability for maintaining, supervising, or reviewing records of CDS or its Participants relating to payments made or to be made by CDS or by any of its Participants on account of beneficial ownership interests in the notes. Participants must look solely to CDS, 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 Issuer to CDS in respect of the notes.

The trustee will maintain a securities register recording the names and addresses of the holders of notes and particulars of the notes held by such holders. No certificates or other instruments evidencing ownership of notes will be issued other than to the CDS Nominee unless

(a) the issuance of such certificates or instruments is required by applicable law;

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

(c) CDS 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 Issuer cannot locate a qualified successor;

(d) CDS ceases to be a recognized clearing agency under applicable Canadian or provincial securities aw or otherwise ceases to be eligible to be a depositary and a successor depositary is not appointed;

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

(f) after the occurrence of an Event of Default, CDS 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 outstanding notes, 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, owners of beneficial interests in the notes will become entitled to receive notes in definitive form, and certificates or other instruments evidencing the notes will be issued in fully registered form in denominations of $2,000 and integral multiples thereof.

Certain Definitions

Set forth below are certain defined terms used in the indenture. Reference is made to the indenture for a full disclosure of all defined terms used therein, as well as any other capitalized terms used herein for which no definition is provided.

"*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.

"*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 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 100 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 Issuer and its Restricted Subsidiaries taken as a whole will be governed by the provisions of the indenture described above under the caption "—Repurchase at the Option of Holders—Change of Control" and/or the provisions described above under the caption "—Certain Covenants—Merger, Consolidation or Sale of Assets" and not by the provisions of the Asset Sale covenant; and

(2) the issuance of Equity Interests in any of the Issuer's Restricted Subsidiaries (other than Holdings) or the sale of Equity Interests in any of 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 Issuer 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 Issuer to the Issuer or to a Restricted Subsidiary of the Issuer;

(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 covenant described above under the caption "—Certain Covenants—Restricted Payments;"

(7) a Permitted Investment;

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

(9) any Asset Swap.

"*Asset Sale Offer*" has the meaning assigned to that term in the indenture governing the notes.

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

"*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."

"*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.

"*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, other than an Operating Lease Obligation.

"*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 state of the United States of America or province of Canada or any political subdivision of any such state or 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) certificates of deposit, time deposits or bankers' acceptances maturing within one year after the date of acquisition thereof and issued or accepted by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and has Tier 1 capital (as defined in such regulations) of not less than US$100.0 million;

(7) 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;

(8) 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

(9) 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.

"*CDS Nominee*" means the nominee of CDS in whose name Global Certificates are registered.

"*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 Issuer, 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 assigned to that term in the indenture governing the notes.

"*Change of Control Payment Date*" has the meaning assigned to that term under "Repurchase at the Option of Holders – Change of Control."

"*Collateral*" has the meaning assigned to that term under "Security for the Notes – General".

"*Collateral Documents*" means the security agreements, mortgages, and other instruments pursuant to which the Issuer 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.

"*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) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; plus

(2) 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

(3) 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

(4) 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

(5) 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

(6) 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 Issuer shall be added to Consolidated Net Income to compute Consolidated EBITDA of the Issuer or Holdings only to the extent that a corresponding amount would be permitted at the date of determination to be dividended to the Issuer 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) but excluding the interest component of all payments associated with Operating Lease 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).

"*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.

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

"*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%.

"*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 Holdings 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 Holdings may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption "—Certain Covenants—Restricted Payments." The amount of Disqualified Stock deemed to be outstanding at any time for purposes of the indenture will be the maximum amount that the Issuer 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.

"*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.

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

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

"*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 Issuer (unless otherwise provided in the indenture).
"First Priority Indebtedness" means Indebtedness of the Issuer 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 the indenture.

"*Global Certificate*" means the certificate representing all of the notes issued on the initial issue date of the notes or on any subsequent date.

"*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 Issuer, for actively traded, non-callable Government of Canada securities having a maturity most nearly equal to the period from the redemption date to the seventh 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 seventh 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 each guarantor under the indenture and its respective successors and assigns, in each case, until the Note Guarantee of such Person has been released in accordance with the provisions of the 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.

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

"*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 (deferred for more than 360 days) of any asset or service other than any indebtedness for such asset or service the due dates of which have been provided for in the purchase or other documentation relating to the acquisition of telecommunication equipment or services provided such indebtedness, in the aggregate, does not exceed $25 million at any one time outstanding and is not secured by any Lien;

(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.

"*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 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 Issuer.

"*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 Issuer or any Restricted Subsidiary of the Issuer sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Issuer such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Issuer, the Issuer 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 Issuer's Investments in such Restricted Subsidiary that were not sold or disposed of in an amount determined as provided in the final paragraph of the covenant described above under the caption "—Certain Covenants—Restricted Payments." The acquisition by the Issuer or any Restricted Subsidiary of the Issuer of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Issuer 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 the covenant described above under the caption "—Certain Covenants—Restricted Payments." Except as otherwise provided in the 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.

"*Issue Date*" means the date on which the notes are originally issued under the indenture which is expected to be on or about May 2, 2011.

"*Issuer*" means Data and Audio-Visual Enterprises Wireless Inc.

"*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 Issuer, Holdings or Dave Leasing;

(b) the ability of the Issuer, 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 Issuer 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 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 Issuer 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 Issuer 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 Issuer or any of its Restricted Subsidiaries.

"*Note Guarantee*" means the Guarantee by each Guarantor of the Issuer's obligations under the indenture and the notes, executed pursuant to the provisions of the indenture.

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

"*Operating Lease Obligation*" means, with respect to any specified Person, an obligation under an actual or implied lease that would be classified as an operating lease under GAAP in effect at the date of this agreement.

"*OSC*" means the Ontario Securities Commission.

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

"*Permitted Investments*" means:

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

(2) any Investment in Cash Equivalents;

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

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

(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 the covenant described above under the caption "—Repurchase at the Option of Holders—Asset Sales;"

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

(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 Issuer 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;

(8) repurchases of the notes;

(9) Investments in existence on the date of the indenture and modifications thereof; 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 Issuer 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 clause (3) of the second paragraph of the covenant entitled "— Certain Covenants — Incurrence of Indebtedness";

(6) Liens existing on the date of the 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 the 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); and

(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 clause (6) of the second paragraph of the covenant entitled "— Certain Covenants— Incurrence of Indebtedness";

(13) Liens in connection with sale and leaseback transactions permitted by the covenant entitled "—Certain Covenants—Limitation on Sale and Leaseback Transactions";

(14) Liens to secure First Priority Indebtedness permitted by clause (11) of the second paragraph of the covenant entitled "— Certain Covenants — Incurrence of Indebtedness"; and

(15) 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 Issuer 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 Issuer 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 Issuer 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.

"*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.

"*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 Issuer.

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

"*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 U.S. Securities Act, as such Regulation is in effect on the date of the 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 Issuer 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 Issuer or any Restricted Subsidiary after the date of the 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 Debentures*" means the unsecured subordinated debentures issued pursuant to the Trust Indenture dated December 17, 2009 between Holdings and Equity Transfer & Trust Company as amended on the Issue Date.

"*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 net cash proceeds received by Holdings since the date of the indenture as a contribution to its common equity capital or from the issue or sale of Equity Interests (other than Disqualified Stock) of Holdings or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities or other debt obligations of Holdings 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 the Fair Market Value of the consideration (if other than cash) from the issue or sale of Equity Interests (other than Disqualified Stock) of Holdings.

"*Unrestricted Subsidiary*" means any Subsidiary of the Issuer that is designated by the Board of Directors of the Issuer 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 the covenant described above under the caption "—Certain Covenants—Transactions with Affiliates," is not party to any agreement, contract, arrangement or understanding with the Issuer or any Restricted Subsidiary of the Issuer unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Issuer or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Issuer;

(3) is a Person with respect to which neither the Issuer 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 Issuer or any of its Restricted Subsidiaries; and

(5) has assets that comprise not more than (a) 10% of the total assets of Holdings (on a consolidated basis) on such date or (b) 10% of the Consolidated EBITDA of Holdings for the four most recently completed fiscal quarters.

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

"*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.

DESCRIPTION OF THE DEBENTURES

The following is a summary only and is qualified in its entirety by, and should be read in conjunction with, the Indenture (as defined below), which is or will be made available prior to closing by written request to the Underwriters.

Holdings will issue the Additional Debentures under an amended and restated trust indenture (the "**Indenture**") between Holdings and Equity Financial Trust Company (the "**Debenture Trustee**"), and promises to pay to the registered holder of each Debenture on September 25, 2018 (the "**Initial Debenture Maturity Date**") or on such earlier date as the amount equal to the principal amount of such Initial Debenture (as defined below), together with any Initial Debenture Interest Obligation (as defined below) added and recorded to the Register (the "**Initial Debenture Payment Amount**"), may become due in accordance with the provisions of the Indenture in lawful money of Canada on presentation and surrender of the Debenture at the principal office of the Debenture Trustee in Toronto, Ontario in accordance with the terms of the Indenture and, subject as hereinafter provided (the "**Initial Debenture**"), to pay interest on the Initial Debenture Payment Amount remaining from time to time unpaid and outstanding from, and including, the date hereof, at the rate of 15.0% per annum, payable in arrears (with the exception of the first interest payment and the last interest payment, which will include interest as set forth below) semi-annual payments (the "**Initial Debenture Interest Obligation**") on June 30 and December 31 in each year (each, an "**Initial Debenture Interest Payment Date**"), the first such payment to fall due on June 30, 2010 (in respect of Initial Debentures issued on December 17, 2009) or June 30, 2011 (in respect of Initial Debentures issued in 2011) and the last such payment (representing interest payable from the last Initial Debenture Interest Payment Date to, but excluding, the Initial Debenture Maturity Date) to fall due on September 25, 2018, payable after as well as before maturity and after as well as before default, with interest on amounts in default at the same rate, compounded semi-annually. The first interest payment in respect of Initial Debentures issued will include interest accrued from, and including the date of issuance of the Additional Debentures to, but excluding June 30, 2011 and will be equal to approximately $23.84 per $1,000 principal amount of the Initial Debentures (assuming an issuance date of May 2, 2011). The Additional Debentures will be issued directly to the subscribers thereof and will be eligible to be deposited with CDS under the same CUSIP as the 2009 Debentures at any time following the June 30, 2011 interest payment date.

Debenture Interest Obligation

Any Initial Debenture Interest Obligation shall be payable to the Debentureholders by Holdings providing a Written Direction of Holdings to the Debenture Trustee to add such amount to the outstanding Initial Debenture Payment Amount and record such amount on the Register (which the Debenture Trustee agrees to do), and such amount shall thereafter bear interest itself as provided herein until such time it is paid. The aggregate Initial Debenture Payment Amount in respect of the aggregate Initial Debentures shall be paid to the next $1,000 increment. In recording such amount on the Register, the Debenture Trustee shall be fully protected in acting and relying upon the Written Direction of Holdings. Notwithstanding the foregoing, prior to an IPO (as defined in the Indenture), Holdings may elect, in its sole discretion and if permitted under the First Lien Note Indenture (as defined in the Indenture), to pay such Initial Debenture Interest Obligation in cash in the manner provided in the Indenture, by delivering to the Debenture Trustee a notice in writing not less than ten (10) Business Days prior to the applicable Initial Debenture Interest Payment Date (and the Debenture Trustee shall promptly deliver such notice to the Depository).

Notwithstanding the foregoing paragraph, on or after the closing date of the IPO (the "**IPO Date**"), Holdings may elect, in its sole discretion and if permitted under the First Lien Note Indenture, to pay the Initial Debenture Interest Obligation in cash, provided Holdings has delivered to the Debenture Trustee a notice in writing not less than ten (10) Business Days prior to the applicable Initial Debenture Interest Payment Date. If Holdings elects to pay such Initial Debenture Interest Obligation in cash, interest hereon shall be payable by cheque mailed by prepaid ordinary mail, by electronic transfer of funds, or by such other means as may be agreed to by the Debenture Trustee, to the registered holder hereof and, subject to the provisions of the Indenture, the mailing of such cheque or payment by electronic funds transfer shall, to the extent of the sum represented thereby (plus the amount of any tax withheld and remitted), satisfy and discharge all liability for Initial Debenture Interest Obligation. In the event Holdings does not so elect, not less than ten (10) Business Days prior to the applicable Initial Debenture Interest Payment Date, Holdings shall provide the Debenture Trustee with written notice that it will not be paying the Initial Debenture Interest Obligation in cash (and the Debenture Trustee shall promptly deliver such notice to the Depository).

Right to Receive Shares

On or after the IPO Date, if the Debenture Trustee has received a notice that Holdings will not be paying the Initial Debenture Interest Obligation in cash at least ten (10) Business Days prior to the applicable Initial Debenture Interest Payment Date, the Debentureholder may (via their Depository Participant) elect, by delivering to Holdings and the Debenture Trustee a notice in writing not less than five (5) Business Days prior to the applicable Interest Payment Date, to receive the Initial Debenture Interest Obligation in that number of Shares obtained by dividing the interest payment by the greater of (x) $12.00 and (y) 95% of the volume-weighted average trading price of the Shares on the Recognized Stock Exchange for the twenty (20) consecutive trading days ending ten (10) Business Days prior to the applicable Initial Debenture Interest Payment Date (if such trading price is in U.S. dollars, such trading price shall be converted into Canadian dollars by using the U.S. dollar / Canadian dollar noon rate of exchange as reported by the Bank of Canada on the tenth Business Day prior to the applicable Interest Payment Date), with any fractional shares being paid, at the option of Holdings, in its sole discretion, in cash if permitted under the First Lien Note Indenture, or by issuing one whole Share. The Shares to be so issued shall be the same class of Shares as the IPO Shares (defined below). The certificates for such Shares shall bear such restrictive or other legends as may be advised by legal counsel to Holdings. In connection with the issuance of Shares hereunder, the Debenture Trustee shall: (a) accept delivery of the Shares from Holdings, (b) deliver the Shares to the Debentureholder, and (c) perform any other action necessarily incidental thereto.

Notwithstanding the foregoing three paragraphs above, with respect to any Initial Debenture Interest Payment Date occurring two years after the date of issuance of the Debentures, the Debentureholders may (via their Depository Participant) elect and direct Holdings, by delivering to Holdings and the Debenture Trustee a notice in writing not less than fifteen (15) Business Days prior to the applicable Interest Payment Date, to pay the Initial Debenture Interest in cash, provided that such Initial Debenture Interest Obligation shall be calculated at the rate of 13.5% per annum, and (A) whether or not an IPO has already occurred, in the event a Debentureholder does not elect to receive the Initial Debenture Interest Obligation in cash, the Debentureholder shall receive the Initial Debenture Interest Obligation as described in the three paragraphs above; or (B) in the event a Debentureholder has elected to receive the Initial Debenture Interest Obligation in cash as described in this paragraph, and (i) an IPO has not yet occurred and Holdings subsequently does not elect to pay such Initial Debenture Interest Obligation in cash, Holdings shall pay, in cash, such Initial Debenture Interest Obligation at the rate of 13.5% per annum; (ii) whether or not an IPO has already occurred and Holdings subsequently elects to pay such Initial Debenture Interest Payment in cash, the Debentureholder shall be deemed to have not made its election to receive the Initial Debenture Interest Obligation at the rate of 13.5% per annum and shall receive such Initial Debenture Interest Obligation, in cash, at the rate of 15.0% per annum (instead of 13.5% per annum); or (iii) an IPO has already occurred and Holdings subsequently does not elect to pay such Initial Debenture Interest Obligation in cash, Holdings shall pay, in cash, such Initial

Debenture Interest Obligation at the rate of 13.5% per annum, and the Debentureholder shall not have the right to elect to receive shares as described in the paragraph above.

Redemption

The Initial Debenture may be redeemed at the option of Holdings on the terms and conditions set out in the Indenture at the redemption price therein and herein set out. Holdings may, on notice as provided in the Indenture, at its option, prior to the date that is 18 months following the date of issuance of the Initial Debentures, redeem, in whole or in part from time to time, at a Redemption Price equal to 107.5% of the Initial Debenture Payment Amount as reflected on the Register, and in addition thereto, at the time of redemption, Holdings shall pay to the holder accrued and unpaid interest thereon. From and after the date that is 18 months following the date of issuance of the Initial Debentures, Holdings may, on notice, as provided in the Indenture, at its option, redeem, in whole or in part from time to time, at a Redemption Price equal to the Initial Debenture Payment Amount as reflected on the Register, and in addition thereto, at the time of redemption, Holdings shall pay to the holder accrued and unpaid interest thereon. If less than all the Debentures of any series for the time being outstanding are at any time to be redeemed, the Debentures to be so redeemed shall be selected by the Debenture Trustee on a pro rata basis to the nearest multiple of $1,000 in accordance with the Payment Amount of the Debentures registered in the name of each holder or in such other manner as the Debenture Trustee deems equitable, subject to regulatory approval, if any. Unless otherwise specifically provided in the terms of any series of Debentures, no Debenture shall be redeemed in part unless the Payment Amount redeemed is $1,000 or a multiple thereof.

On the IPO Date, Holdings shall redeem on a pro rata basis (based on the aggregate Initial Debenture Payment Amount outstanding) the Initial Debenture Redeemed Interest Amount by issuing and delivering to the Debenture Trustee that number of Shares that are sold or issued to the public pursuant to the IPO (the "**IPO Shares**") obtained by dividing such Initial Debenture Redeemed Interest Amount by the price of the IPO Shares (if such share price is in U.S. dollars, such price shall be converted into Canadian dollars by using the U.S. dollar / Canadian dollar noon rate of exchange as reported by the Bank of Canada on the tenth Business Day prior to the applicable Interest Payment Date), with any fractional shares being paid, at the option of Holdings, in its sole discretion, in cash, if permitted under the First Lien Note Indenture, or by issuing one whole IPO Share, and interest upon such Initial Debenture Redeemed Interest Amount (as defined below) shall cease to be payable from and after the IPO Date. The "**Initial Debenture Redeemed Interest Amount**" is an amount equal to the sum of (A) 50% of any Initial Debenture Interest Obligation paid in accordance with the Indenture (that has not been otherwise paid in cash), and (B) any accrued and unpaid interest on such amounts referred to in item (A) above (which, for greater certainty, have not yet been included in the Initial Debenture Payment Amount), calculated up to but excluding the IPO Date. In connection with the issuance of IPO Shares hereunder, the Debenture Trustee shall: (a) accept delivery of the IPO Shares from Holdings, (b) deliver the IPO Shares to the Debentureholder, and (c) perform any other action necessarily incidental thereto.

Warrants

Subject to the provisions of the Indenture, on each date that is 18 months following the date of issuance of the Additional Debentures, and each six-month anniversary thereafter (each an "**Issue Date**"), Holdings shall issue and deliver to the Debenture Trustee, up to 40,000 Warrants, where one CW Warrant and one B Warrant 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 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. The certificate(s) for any Warrants issued will bear such restrictive or other legends as may be advised by counsel to Holdings. In connection with the issuance of Warrants hereunder, the Debenture Trustee shall: (a) accept delivery of the Warrants from Holdings, (b) deliver the Warrants to the Debentureholder, and (c) perform any other action necessarily incidental thereto. Upon the earlier of (x) the occurrence of a Liquidity Event, or (y) the date no Additional Debentures are outstanding, Holdings shall no longer have any obligation to issue such Warrants on an Issue Date as herein provided.

Issuance of Additional Debentures

The Additional Debentures are one of the Series 2009 15% Senior Unsecured Debentures due September 25, 2018 of Holdings issued under the provisions of the Indenture. The Additional Debentures authorized for issue are limited to an aggregate principal amount of $20,000,000 in lawful money of Canada. Reference is hereby expressly made to the Indenture for a description of the terms and conditions upon which the Additional Debentures are issued and held and the rights and remedies of the holders of the Additional Debentures and of Holdings and of the Debenture Trustee, all to the same effect as if the provisions of the Indenture were therein set forth to all of which provisions the holder of the Debenture by acceptance thereof assents. To the extent that anything contained herein is inconsistent with or conflicts with the provisions of the Indenture, the provisions of the Indenture shall govern. Any capitalized terms used herein but not otherwise defined have the meanings given to them in the Indenture.

The Additional Debentures are issuable only in denominations of $1,000 and integral multiples thereof. Upon compliance with the provisions of the Indenture, Debentures in any authorized form or denomination may be exchanged for Debentures in any other authorized form or denomination, of the same series and date of maturity, bearing the same interest rate and of the same aggregate principal amount as the Debentures so exchanged. Debentures of any series may be exchanged only at the principal offices of the Debenture Trustee in the city of Toronto, Ontario or at such other place or places, if any, as may be specified in the Debentures of such series and at such other place or places as may from time to time be designated by Holdings with the approval of the Debenture Trustee. Any Debentures tendered for exchange shall be surrendered to the Debenture Trustee. Holdings shall execute and the Debenture Trustee shall certify all Debentures necessary to carry out exchanges as aforesaid. All Debentures surrendered for exchange shall be cancelled. Debentures issued in exchange for Debentures which at the time of such issue have been selected or called for redemption at a later date shall be deemed to have been selected or called for redemption in the same manner and shall have noted thereon a statement to that effect. No Debentures may be transferred or exchanged during the five Business Days preceding and including (i) June 30 and December 31 in each year, and (ii) the day of any selection by the Debenture Trustee of Debentures to be redeemed, as the registers of the Debenture Trustee will be closed during such periods.

Change of Control

Within 30 days following the occurrence of a Change of Control of Holdings, Holdings is required to make an offer to purchase all of the Initial Debentures at a price equal to (x) 101% of the Initial Debenture Payment Amount plus (y) accrued and unpaid interest (if any) up to, but excluding, the date the Initial Debentures are so repurchased (the "**Offer**"). If 90% or more of the Initial Debenture Payment Amount of all Initial Debentures outstanding on the date Holdings provides notice of a Change of Control to the Debenture Trustee have been tendered for purchase pursuant to the Offer, Holdings has the right and obligation upon written notice provided to the Debenture Trustee within 10 days following the expiration of the Offer, to redeem and shall redeem all the Initial Debentures remaining outstanding on the Offer effective as of the same date and at the same price.

Ranking and Subordination

The indebtedness evidenced by the Initial Debenture, and by all other Initial Debentures now or hereafter certified and delivered under the Indenture, is a direct unsecured obligation of Holdings, and is subordinated in right of payment, to the extent and in the manner provided in the Indenture, to the prior payment of all Senior Indebtedness, whether outstanding at the date of the Indenture or thereafter created, incurred, assumed or guaranteed. The Initial Debentures will rank *pari passu* with each other series of Debentures and, subject to statutory preferred exceptions, with all other present and future unsecured Indebtedness (as defined in the Indenture) of Holdings, including for greater certainty, up to $60 million principal amount of unsecured convertible debentures issued by Holdings to Quadrangle or DAVE Investments, as the case may be, together with any payment in kind or other accrued or capitalized interest, except, in each case for (i) except for sinking fund provisions (if any) applicable to different series of Debentures, and (ii) any unsecured Indebtedness which by its terms is subordinated in rank to the Debentures, including $35 million principal amount of unsecured convertible debentures which may be issued by Holdings to Quadrangle or DAVE Investments, as the case may be, pursuant to the Quadrangle Facility.

The Initial Debenture Payment Amount hereof may become or be declared due and payable before the stated maturity in the events, in the manner, with the effect and at the times provided in the Indenture.

The Indenture contains provisions making binding upon all holders of Debentures outstanding thereunder (or in certain circumstances specific series of Debentures) resolutions passed at meetings of such holders held in accordance with such provisions and instruments signed by the holders of a specified majority of Debentures outstanding (or specific series), which resolutions or instruments may have the effect of amending the terms of the Initial Debenture or the Indenture.

Restrictive Covenants

Holdings will not, and will not permit any of its Subsidiaries (as defined in the Indenture) to incur any Indebtedness (as defined in the Indenture) that is both contractually subordinate in right of payment to any Senior Indebtedness (as defined in the Indenture) of Holdings and senior in right of payment to the Debentures.

Holdings will not, and will not permit any of its Subsidiaries to incur any "Indebtedness" that is otherwise not "Permitted Debt" as such terms are defined in the First Lien Note Indenture (such will be the case even if the First Lien Note Indenture is terminated or replaced with another indenture or credit facility for any reason at any time).

For greater certainty, the covenant contained in the foregoing paragraph shall not prevent or prohibit Holdings or any of its Subsidiaries from refinancing, replacing, amending, extending or otherwise modifying existing "Indebtedness" or creating new "Indebtedness" for so long as the covenant in the foregoing paragraph is satisfied.

Nothing herein prevents Holdings from creating and issuing any Indebtedness which by its terms is subordinated in rank with any Debentures.

Transfer Restrictions

The Indenture contains certain restrictions on transfer of Initial Debentures to, prior to an IPO, persons who are not Canadians within the meaning of the Canadian Telecommunications Common Carrier Ownership and Control Regulations promulgated pursuant to the *Telecommunications Act* (Canada) including provisions that allow Holdings to refuse to issue or register a transfer of Initial Debentures to persons who are not as such "Canadian" and allow the Debenture Trustee to correct the Register with the written direction of Holdings.

The Indenture contains provisions disclaiming any personal liability on the part of holders of Shares, officers and directors of Holdings, or any annuitant under a plan of which a shareholder of Holdings acts as trustee or carrier in respect of any obligation or claim arising out of the Indenture or the Initial Debenture.

The Debentures may only be transferred, upon compliance with the conditions prescribed in the Indenture, in one of the registers to be kept at the principal office of the Debenture Trustee in Toronto, Ontario and in such other place or places and/or by such other registrars (if any) as Holdings with the approval of the Debenture Trustee may designate. No transfer of the Additional Debentures shall be valid unless made on the register by the registered holder thereof or his executors or administrators or other legal representatives, or his or their attorney duly appointed by an instrument in form and substance satisfactory to the Debenture Trustee or other registrar, and upon compliance with such reasonable requirements as the Debenture Trustee and/or other registrar may prescribe and upon surrender of the Debenture for cancellation. Thereupon a new Debenture in the same aggregate principal amount shall be issued to the transferee in exchange thereof.

The Debentures shall not become obligatory or shall entitle the holder to the benefits of the Indenture for any purpose until it shall have been manually certified by the Debenture Trustee under the Indenture.

CERTAIN CANADIAN FEDERAL INCOME TAX CONSIDERATIONS

In the opinion of Stikeman Elliott LLP, counsel to the Company, the following is a summary of the principal Canadian federal income tax considerations under the *Income Tax Act* (Canada) (the "**Tax Act**") generally applicable to a person that acquires beneficial ownership of a Note on the date hereof pursuant to the offering by the Company and who, for purposes of the Tax Act, deals at arm's length with the Company and is not affiliated with the Company or a subsequent purchaser of Notes (a "**Holder**").

This summary is based upon the current provisions of the Tax Act and the regulations thereunder (the "**Regulations**") in force as of the date hereof, counsel's understanding of the current administrative and assessing policies and practices published by the Canada Revenue Agency (the "**CRA**") and all specific proposals to amend the Tax Act or the Regulations publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the "**Tax Proposals**"). This summary assumes that the Tax Proposals will be enacted as currently proposed, but no assurance can be given that this will be the case. This summary is not exhaustive of all possible Canadian federal income tax considerations and, except for the Tax Proposals, does not take into account or anticipate any changes in law or in the administrative or assessing policies and practices of the CRA, whether by legislative, governmental or judicial action, nor does it take into account provincial, territorial or foreign tax considerations.

This summary is of a general nature only and is not intended to be, nor should it be construed to be, legal or tax advice to any prospective Holder. Accordingly, prospective Holders should consult their own tax advisors having regard to their own particular circumstances. This summary does not discuss the consequences of acquiring, holding or disposing of Debentures or any related acquisition, holding, exercise or disposition of Warrants (including the acquisition, holding or disposition of any securities underlying the Warrants). Investors contemplating an acquisition of Debentures should consult their own tax advisors having regard to their own particular circumstances.

Holders Resident in Canada

The following portion of the summary applies to a Holder who, at all relevant times and for purposes of the Tax Act, is resident or is deemed to be resident in Canada for purposes of the Tax Act and holds Notes as capital property (a "**Resident Holder**"). Generally, the Notes will constitute capital property to a Resident Holder provided that the Resident Holder does not hold them in the course of carrying on a business of buying and selling securities and does not acquire them as part of an adventure in the nature of trade. Certain Resident Holders who might not otherwise be considered to hold their Notes as capital property may, in certain circumstances, be entitled to have the Notes and every other "Canadian security" (as defined in the Tax Act) owned by such Resident Holder treated as capital property by making the irrevocable election permitted by subsection 39(4) of the Tax Act. Resident Holders should consult their own tax advisors for advice as to whether an election under subsection 39(4) of the Tax Act is available and/or advisable in their particular circumstances.

This portion of the summary is not applicable to a Resident Holder: (i) that is a "financial institution" (within the meaning of section 142.2 of the Tax Act); (ii) that has elected to report its "Canadian tax result" (as defined in subsection 261(1) of the Tax Act) in a currency other than the Canadian currency; or (iii) an interest in which is a "tax shelter investment" for the purposes of the Tax Act. Such Resident Holders should consult their own tax advisors.

Interest on the Notes

A Resident Holder that is a corporation, partnership, unit trust or trust of which a corporation or a partnership is a beneficiary will be required to include in computing its income for a taxation year any interest on a Note that accrued to it to the end of the taxation year or that became receivable or was received by it before the end of the taxation year, except to the extent that such interest was included in computing its income for a preceding taxation year.

Any other Resident Holder, including an individual, will be required to include in computing its income for a taxation year any amount received or receivable by the Resident Holder in the taxation year as interest on the Notes, depending upon the method regularly followed by the Resident Holder in computing income, to the extent that such amount was not included in computing the Resident Holder's income for a preceding taxation year. In addition, if at any time a Note should become an "investment contract" (as defined in the Tax Act) in relation to such a Resident Holder, such Resident Holder will be required to include in computing income for a taxation year any interest that accrues to the Holder on the Notes up to any "anniversary date" (as defined in the Tax Act) in that year to the extent such interest was not otherwise included in the Holder's income for that year or a preceding year.

Any premium paid by the Company to a Resident Holder on the redemption or repurchase of a Note will generally be deemed to be interest received by the Resident Holder at the time of the payment to the extent that it can reasonably be considered to relate to, and does not exceed the value at that time of, the interest that would have been paid or payable by the Company on the Note for a taxation year of the Company ending after that time. Such interest will be required to be included in computing the Resident Holder's income in the manner described above.

Disposition of Notes

On a disposition or deemed disposition of a Note by a Resident Holder at any time, the Resident Holder will generally be required to include in computing its income for the taxation year in which the disposition occurs an amount equal to the interest that accrued on the Note to the date of the disposition to the extent that such amount was not otherwise included in computing the Resident Holder's income for that taxation year or a preceding taxation year.

In addition, on the disposition or deemed disposition of a Note the Resident Holder will realize a capital gain (or a capital loss) to the extent that the proceeds of disposition of the Note (net of any accrued interest and any reasonable costs of disposition) exceed (or are exceeded by) the adjusted cost base of the Note to the Resident Holder.

A Resident Holder will generally be required to include in computing its income for the taxation year of disposition, one-half of the amount of any capital gain (a "**taxable capital gain**") realized in such year. Subject to and in accordance with the provisions of the Tax Act, a Resident Holder will generally be required to deduct one-half of the amount of any capital loss (an "**allowable capital loss**") against taxable capital gains realized in the taxation year of disposition. Allowable capital losses in excess of taxable capital gains realized by a Resident Holder in a particular taxation year generally may be carried back and deducted in any of the three preceding taxation years or carried forward and deducted in any subsequent taxation year against net taxable capital gains realized by the Resident Holder in any such taxation year, subject to and in accordance with the detailed rules contained in the Tax Act in that regard.

Additional Refundable Tax

A Resident Holder that is a "Canadian-controlled private corporation" (as defined in the Tax Act) may be liable to pay a refundable tax of 6 2/3% on its "aggregate investment income" (as defined in the Tax Act) for the taxation year, including interest income and taxable capital gains.

Alternative Minimum Tax

Capital gains realized by a Resident Holder that is an individual or a trust, other than certain specified trusts, may give rise to alternative minimum tax under the Tax Act. Resident Holders should consult their own tax advisors with respect to the application of alternative minimum tax.

Holders Not Resident in Canada

The following portion of the summary applies to a Holder who, at all relevant times and for purposes of the Tax Act, is neither resident nor deemed to be resident in Canada and who will not use or hold and will not be deemed to use or hold the Notes in or in the course of carrying on business in Canada (a "**Non-Resident Holder**"). Special rules which apply to non-resident insurers carrying on business in Canada and elsewhere are not discussed in this summary.

No Canadian withholding tax will apply to any interest, principal, premium, bonus or penalty paid or credited to a Non-Resident Holder by the Company or to the proceeds received by a Non-Resident Holder on the disposition of a Note, including a redemption, payment on maturity or repurchase.

Generally, there are no other Canadian federal income taxes that would be payable by a Non-Resident Holder as a result of holding or disposing of a Note (including for greater certainty, any gain realized by a Non-Resident Holder on a disposition of a Note).

PLAN OF DISTRIBUTION

Pursuant to an underwriting agreement to be entered into among the Company, Holdings and the Underwriters (the "**Underwriting Agreement**"), the Company and Holdings will agree to sell and the Underwriters will agree to purchase, as principals, subject to compliance with all necessary legal requirements and with the terms and conditions to be contained in the Underwriting Agreement, the Notes and the Additional Debentures. The obligations of the Underwriters under the Underwriting Agreement may be terminated upon the occurrence of certain stated events. The Underwriters will be, however, obligated to take up and pay for all of the Notes and the Additional Debentures if any of the Notes and the Additional Debentures are purchased under the Underwriting Agreement. The purchase price of the Notes and the Additional Debentures, plus the accrued interest, if any, from the date of issuance to the date of delivery, shall be payable in cash to the Company against delivery of the Notes and the Additional Debentures.

The expenses of this offering, not including the Underwriters' fee, are estimated to be $1.6 million and are payable by the Company. The Underwriters will receive a fee of 3.0% of the gross proceeds raised pursuant to the Offering of the Notes and 4.25% of the gross proceeds raised pursuant to the Additional Offering of the Additional Debentures. The offering prices of the Notes and the Additional Debentures, respectively, was determined by negotiation between the Company, Holdings and the Underwriters.

No preliminary or final prospectus is being filed with Canadian securities regulatory authorities with respect to the offering of the Notes or the Additional Debentures, both of which are being made solely on a private placement basis under applicable securities laws in each of British Columbia, Alberta, Quebec and Ontario, and such other Canadian provinces or foreign jurisdictions as may be agreed between the Underwriters, the Company and Holdings. Purchasers of the Notes and the Additional Debentures will therefore be able to resell the Notes and the Additional Debentures only pursuant to available exemptions from the prospectus requirements of applicable Canadian securities laws or upon expiry, if ever, of the applicable statutory hold period. See "Risk Factors".

The Company and Holdings will agree to indemnify the Underwriters, their affiliates and their respective directors, officers, employees, partners, agents, shareholders and advisors against certain liabilities, including liabilities under applicable securities legislation, and to contribute to payments that the Underwriters may be required to make in respect thereof.

Subscriptions will be received subject to rejection or allotment in whole or in part, and the right is reserved to close the subscription books at any time without notice. It is expected that the closing will occur on or about May 2, 2011, or on such other date as may be agreed by the Company, Holdings and the Underwriters.

Neither the Notes nor the Additional Debentures will be listed on any securities exchange or quotation system and, consequently, there is no market through which the Notes or the Additional Debentures may be sold. In connection with the Offering and the Additional Offering, the Underwriters may effect transactions that stabilize or maintain the market price of the Notes or the Additional Debentures offered at levels other than those that might otherwise prevail in the open market. Such transactions, if commenced, may be discontinued at any time. The Underwriters may make a market in the Notes or the Additional Debentures, but they will not be obligated to do so, and may discontinue any market making at any time without notice. No assurance can be given that a trading market in the Notes or the Additional Debentures will develop or as to the liquidity of any trading market for the Notes or the Additional Debentures.

RISK FACTORS

The following information describes certain significant risks and uncertainties inherent in the Company's business, the Offering and the Additional Offering. Prospective investors should take these risks into account in evaluating the Company and Holdings and in deciding whether to purchase the Notes and the Additional Debentures offered hereby. This section does not describe all risks applicable to the Company, its industry or its business, and it is intended only as a summary of certain material risks. Additional risks and uncertainties that are not presently known or that the management currently believes are immaterial may also adversely impact the Company's business operations. Prospective investors should carefully consider such risks and uncertainties together with the other information contained in this offering memorandum. If any of such risks or uncertainties actually occur, the

Company's business, financial condition, or operating results could be harmed substantially and could differ materially from the plans and other forward-looking statements included in this offering memorandum. In such case, the trading price of the Notes and the Additional Debentures could fall, and the Company or Holdings may not be able to meet their respective obligations under the Notes and the Additional Debentures, and investors may lose all or part of their investment. For purposes of this section, references to the "Company" means, collectively, Data & Audio-Visual Enterprises Wireless Inc. and Data & Audio-Visual Enterprises Holdings Inc., except where the context requires otherwise.

Risks and Uncertainties Affecting the Company's Business

The Company has experienced net losses, and may not be profitable in the future.

The Company experienced losses of $96.0 million and $15.8 million for the years ended December 31, 2010, December 31, 2009, respectively. The Company may not generate profits in the future on a consistent basis or at all. The Company's strategic objectives depend on its ability to successfully and cost-effectively operate its launched markets, on its ability to forecast and respond appropriately to changes in the competitive and economic environment, on the successful expansion of its distribution channels and on customer acceptance of its product and service offerings. The Company has experienced and expects to continue to experience increased expenses in connection with its launch of significant new business expansion efforts, including activities to broaden its product portfolio and distribution channels and to enhance its network coverage and capacity. If the Company fails to attract additional customers for its products and services and fails to achieve consistent profitability in the future, that failure could have a negative effect on its financial condition. The Company's financial results and other forward-looking statements are based on historical results of operations and assumptions that are subject to significant uncertainties. The Company's performance may vary from its historical results of operations, projections and other forward-looking statements, and these variations could be material and adverse. Prospective investors are cautioned not to place undue reliance on the Company's historical results and trends contained in this offering memorandum.

The Company faces substantial competition.

The competition facing the Company's businesses is described in the section entitled "Overview of Competitive Landscape". There can be no assurance that the Company's current or future competitors will not provide services superior to those it provides, or at lower prices, adapt more quickly to evolving industry trends or changing market requirements, enter the market in which it operates, or introduce competing services. Any of these factors could reduce the Company's market share, decrease its revenue or increase its churn. The Company may be required to re-price some or all of the existing subscriber base as lower pricing offered to attract new customers is extended to or requested by existing customers. As wireless penetration of the population deepens, new wireless customers may generate lower average monthly revenues than those generated from existing customers, which could slow revenue growth.

The Company may face additional competition from new entrants in the wireless space, many of whom may have significantly more resources than it does.

New entrants with significant financial resources have acquired spectrum rights in geographic areas served by the Company, including in many of the metropolitan areas where it currently operates or may operate. In addition, other carriers who offer unlimited fixed-rate service plans similar to the Company's acquired spectrum which overlaps some of the metropolitan areas it serves or plan to serve. These licenses could be used to provide services that directly compete with the Company's services.

The licensing of new spectrum may result in new competitors and/or allow existing competitors to acquire additional spectrum, which could allow them to offer services the Company may not be able to offer in its spectrum. Furthermore, Industry Canada may pursue policies designed to make available additional spectrum for the provision of wireless services in each of the Company's metropolitan areas, which may increase the number of wireless competitors and enhance the ability of its wireless competitors to offer additional plans and services.

The wireless telecommunications industry has been, and the Company believes will continue to be, characterized by several trends, including the following:

- rapid development and introduction of new technologies, products, and services, such as VoIP, push-to-talk services (push-to-talk), location based services including such as global positioning satellite, or GPS, mapping technology and high speed data services, including streaming video, mobile gaming and other applications;
- substantial regulatory change, including changes designed to stimulate competition for both local and long distance telecommunications services and continued allocation of spectrum for, and relaxation of existing rules to allow existing licensees to offer, wireless services competitive with the Company's services;
- increased competition within established metropolitan areas from current and new entrants that may provide competing or alternative services;
- an increase in mergers and strategic alliances that allow one telecommunications provider to offer increased services, access to wider geographic territory, or attractive bundles of services; and
- the ambiguity of traditional dividing lines between, and the bundling of, different services, such as local telephone, long distance, wireless, video, data and Internet services. For example, several carriers appear to be positioning themselves to offer a "quadruple play" of services which includes telephone service, Internet access, video service and wireless service.

The Company expects competition to intensify as a result of new competitors, allocation of additional spectrum and relaxation of existing policies, and the development of new technologies, products and services. For instance, the Company currently does not offer some of the high speed data applications offered by its competitors. In addition, service providers in other countries have announced plans to develop a Wi-Fi or Wi-Max enabled handset. Such a handset would permit subscribers to communicate using voice and data services with their handset using VoIP technology in any area equipped with a wireless Internet connection, or hot spot, potentially allowing more carriers to offer larger bundles of minutes while retaining low prices and the ability to offer attractive roaming rates. The number of hot spots in Canada is growing rapidly, with some major cities and urban areas being covered entirely. The availability of VoIP or another alternative technology to the Company's competitor's subscribers could increase their ability to offer competing rate plans, which would have an adverse effect on its ability to attract and retain customers.

The Company may face increased competition from other unlimited fixed rate plan competitors in its existing and new markets.

The Company currently overlaps with other unlimited fixed rate plan wireless carriers in the areas in which it currently hold licenses. Additional fixed rate unlimited carriers may choose to begin service in the same geographic areas in which the Company currently offers service or plan to offer service, and such competition may reduce its growth, increase its churn, and cause it to incur additional costs to acquire customers, which may adversely affect its financial performance in the future.

The wireless industry is experiencing rapid technological change, and the Company may lose customers if it fails to keep up with these changes.

The wireless telecommunications industry is experiencing significant technological change. The Company's continued success will depend, in part, on its ability to anticipate or adapt to technological changes and to offer, on a timely basis, services that meet customer demands. The Company cannot assure you that it will obtain access to new technology on a timely basis, on satisfactory terms, or that it will have adequate spectrum to offer new services or implement new technologies. This could have a material adverse effect on its business, financial condition and operating results. For the Company to keep pace with these technological changes and remain competitive, it may need to continue to make significant capital expenditures to its integrated communications system and to acquire additional spectrum. Customer acceptance of the services that it offers will continually be affected by technology-based differences in its product and service offerings.

The Company is subject to various risks from competing technologies.

There are several technologies that may impact the way in which the Company's services are delivered. These technologies include broadband, IP-based voice, data and video delivery services, the mass market deployment of optical fibre technologies to the residential and business markets, the deployment of broadband wireless access, and wireless services using radio frequency spectrum to which the Company may have no or limited access to. These technologies may result in significantly different cost structures for the users of the technologies, and may consequently affect the long-term viability of certain of the Company's currently deployed technologies. Some of these new technologies may allow competitors to enter the Company's markets with similar products or services that may have lower cost structures. Some of these competitors may be larger with more access to financial resources than the Company has.

Some of the Company's competitors have technological or operating capabilities that it may not be able to successfully compete within its existing markets or any new markets it may launch.

Some of the carriers the Company competes against provide wireless services using cellular frequencies in the 800 MHz band. These frequencies enjoy propagation advantages over the frequencies the Company uses which may cause it to have to spend more capital than its competitors, in certain areas, to cover the same area. In addition, Industry Canada may auction additional spectrum in the 700 MHz band which will have similar characteristics to the cellular frequencies. Many of the wireless carriers with whom the Company competes with have service area footprints substantially larger than its footprint. In addition, certain of the Company's competitors are able to offer their customers services over larger geographic areas and at rates lower, in those areas, than the rates it can offer.

Certain carriers the Company competes against or may compete against in the future are multi-faceted telecommunications service providers which, in addition to providing wireless services, are affiliated with companies that provide local wireline, long distance, satellite television, Internet, media, content, cable television and/or other services. These carriers are capable of bundling their wireless services with other telecommunications services and other services in a package of services that the Company may not be able to duplicate at competitive prices.

The Company also competes with companies that use other communications technologies, including paging and digital two-way paging, enhanced specialized mobile radio and domestic and global mobile satellite service. These technologies may have certain advantages over the technology the Company uses and may ultimately be more attractive to its existing and potential customers. The Company may compete in the future with companies that offer new technologies and market other services that it does not offer or may not be able to offer. Some of the Company's competitors do or may offer these other services together with their wireless communications service, which may make their services more attractive to customers. Energy companies and utility companies may also expand their services to offer communications services.

In addition, the Company competes with companies that take advantage of the unlicensed spectrum that Industry Canada is increasingly allocating for use. Certain technical standards are being prepared, including Wi-Max, which may allow carriers to offer services competitive with the Company's in the unlicensed spectrum. The users of this unlicensed spectrum are not subject to the same regulatory requirements that the Company is and, therefore, may have certain advantages over it. However, users of the unlicensed spectrum do not have the exclusive use of licensed spectrum that the Company does by virtue of its licenses.

The Company is reliant on third party service providers through outsourcing arrangements.

Through outsourcing arrangements, third parties provide certain essential components of the Company's business operations to its employees and customers, including payroll, call centre support, handset distribution, installation and service technicians, and certain information technology functions. Interruptions in these services can adversely affect the Company's ability to provide services to its customers.

The Company is dependent on certain key infrastructure, systems, handset vendors and third party dealers, which could impact the quality of its services or impede network development and expansion.

The Company has relationships with a small number of essential network infrastructure, systems and handset vendors, over which it has no operational or financial control and only limited influence in how the vendors conduct their businesses. The failure of one of the Company's network infrastructure suppliers could delay programs to provide additional network capacity or new capabilities and services across the business. Handsets and network infrastructure suppliers may, among other things, extend delivery times, raise prices and limit supply due to their own shortages and business requirements. If these suppliers fail to deliver products and services on a timely basis or fail to develop and deliver handsets that satisfy the Company's customers' demands, this could have a material adverse effect on its business, financial condition and results of operations. Similarly, interruptions in the supply of equipment for its networks and systems could impact the quality of its service or impede network development and expansion.

The Company may be unable to obtain new agreements or continue existing arrangements for roaming and other services it needs from other carriers to remain competitive.

Many of the Company's competitors have national networks which enable them to offer automatic roaming and long distance telephone services to their subscribers at a lower cost than the Company can offer. The Company does not have a national network, and it must pay other carriers charges for carrying roaming and long-distance calls made by its subscribers. The Company currently has roaming agreements with several other carriers which allow its customers to roam on those carriers' network. The roaming agreements, however, do not cover all geographic areas where the Company's customers may seek service when they travel. In addition, the Company believes the rates charged by the carriers to it in some instances are higher than the rates they charge to certain other roaming partners. The Company's current and future customers may desire that it offer automatic roaming in areas not currently covered by its agreements, and it may be unable to obtain new roaming agreements with other carriers. If the Company is unable to provide automatic roaming to its customers in these areas it may increase its churn and impact its ability to acquire customers, which may adversely affect its financial performance in the future.

The Company relies on third parties for logistics, delivery and certain merchandising.

Through contractual arrangements, third parties provide certain essential components of the Company's business operations, including logistics, delivery and certain merchandising services. The Company has no operational or financial control and only limited influence in how these vendors conduct their businesses. Interruptions in the services provided by such vendors can adversely affect the Company's ability to provide products and services to its customers, which may adversely affect its financial performance in the future.

The Company relies on third parties for customer service functions, such as call centre, reverse logistics and warranty services.

Through contractual arrangements, third parties provide certain essential components of its customer service functions, such as operating call centres and providing reverse logistics and warranty services. The Company has no operational or financial control and only limited influence in how these service providers conduct their businesses. Interruptions in these services can adversely affect the customer service provided to its customers, which may adversely affect its financial performance in the future.

The Company is highly dependent upon information technology.

The day-to-day operations of the Company's business is highly dependent on its information technology systems and those of its vendors and third party suppliers. An inability to enhance information technology systems to accommodate additional customer growth and support new products and services could have an adverse impact on the Company's ability to acquire new subscribers, manage subscriber churn, produce accurate and timely subscriber invoices, generate revenue growth and manage operating expenses, all of which could adversely impact its financial results and position.

In addition, the Company uses industry standard network and information technology security, survivability and disaster recovery practices. the Company's ongoing success is in part dependent on the protection of its corporate business sensitive data including its customers' as well as employees' personal information. This information is considered company intellectual property and it needs to be protected from unauthorized access and compromise for which the Company relies on policies and procedures as well as IT systems. Failure to secure the Company's data and the privacy of its customer information may result in non-compliance with regulatory standards, may lead to negative publicity, litigation and reputation damage, any of which may result in customer losses, financial losses and an erosion of public confidence.

In the event that the Company cannot access the facilities that house its network infrastructure and information technology systems or those of its suppliers and vendors, as a result of a natural or manmade disaster or otherwise, operations may be significantly affected and may result in a condition that is beyond the scope of its ability to recover without significant service interruption and commensurate revenue and customer loss.

Security breaches related to the Company's physical facilities, computer networks, and informational databases may cause harm to its business and reputation and result in a loss of customers.

The Company's physical facilities and information systems may be vulnerable to physical break-ins, computer viruses, theft, attacks by hackers, or similar disruptive problems. If hackers gain access to the Company's databases, they may be able to steal, publish, delete or modify confidential personal information concerning its subscribers. In addition, misuse of its customer information could result in more substantial harm perpetrated by third-parties. This could damage its business and reputation, and result in a loss of customers.

Network failures or quality impairments could reduce revenue and impact customer service.

The Company has experienced network failures in the past, which have negatively impacted customer service. The failure or impairment of the Company's networks or key network components could, in some circumstances, result in an indefinite loss of service for its customers and could adversely impact its financial results and position. In addition, the Company relies on business partners to carry certain of its customers' traffic. The failure of one of these carriers might also cause an interruption in service for the Company's customers that would last until it can reroute the traffic to an alternative carrier.

A system failure could cause delays or interruptions of service, which could cause the Company to lose customers.

To be successful, the Company must provide its customers reliable service. Some of the risks to the Company's network and infrastructure which may prevent it from providing reliable service include:

- physical damage to outside plant facilities;
- power surges or outages;
- equipment failure;
- vendor or supplier failures;
- software defects;
- human error;
- disruptions beyond the Company's control, including disruptions caused by terrorist activities, theft, or natural disasters; and
- failures in operational support systems.

Network disruptions may cause interruptions in service or reduced capacity for customers, either of which could cause the Company to lose customers and incur expenses. Further, the Company's costs to replace or repair the network may be substantial thus causing its costs to provide service to increase. The Company may also experience higher churn as its competitors systems may not experience similar problems.

If the Company is unable to manage its planned growth effectively, its costs could increase and its level of service could be adversely affected.

The Company has experienced rapid growth and development in a relatively short period of time and expects to continue to experience substantial growth in the future. The management of rapid growth will require, among other things, commitment to investing capital with uncertainty towards achieving revenue targets. This could adversely affect the Company's financial performance in the event it does not meet revenue targets.

If the Company loses the right to install its equipment on wireless cell sites, or are unable to renew expiring leases for wireless cell sites on favorable terms or at all, its business and operating results could be adversely impacted.

The Company's network equipment is installed to a large degree on rooftops controlled by individual landlords or on leased cell site tower facilities. Should the Company be unable to reach suitable terms with an individual landlord upon agreement renewal, it may lose the ability to service an area surrounding that site. This can adversely affect the customer service provided to the Company's customers, which may adversely affect its financial performance in the future. A small portion of the Company's cell sites are leased from a small number of large cell site companies pursuant to master agreements that govern the general terms of its use of that company's cell sites. If a master agreement with one of these cell site companies were to terminate, the cell site company were to experience severe financial difficulties or file for bankruptcy or if one of these cell site companies were unable to support the Company's use of its cell sites, it would have to find new sites or rebuild the affected portion of its network.

The Company is subject to the risk of unforeseen or catastrophic events, including terrorist attacks, natural disasters or other hostile or catastrophic events.

The Company is subject to the risk of unforeseen or catastrophic events, including terrorist attacks, natural disasters or other hostile or catastrophic events. The occurrence of such an event could damage, destroy or otherwise materially affect the Company's network, information technology systems, equipment, physical facilities or those of its partners, vendors and suppliers that it relies upon. The occurrence of any such event could impact the Company's ability to operate the business and provide services to its customers and, as a result, its financial condition and operating results could be adversely affected. Additionally, the Company may not have insurance against these risks, and, in cases in which it does not have insurance, the insurance proceeds may be inadequate to cover its losses, and its operating results could be adversely affected.

The Company is subject to general economic conditions.

The Company's business is affected by general economic conditions, consumer confidence and spending. Recessions or declines in economic activity or economic uncertainty generally cause an erosion of consumer and business confidence and may materially reduce discretionary consumer spending. Any reduction in discretionary spending by consumers and businesses or weak economic conditions may have a materially adverse affect on the Company through decreased demand for its products and services including decreased advertising, decreased revenue and profitability, higher churn and higher bad debt expense.

The Company's business strategy may not succeed in the long term.

A major element of the Company's business strategy is to offer consumers a service that allows them to make unlimited local and/or long distance calls from within a local calling area, depending on the service plan selected, and to receive unlimited calls from any area for a flat monthly rate without entering into a long-term service contract. This is a relatively new approach to marketing wireless services and it may not prove to be successful in the long term or deployable in markets the Company may acquire in the future. From time to time, the Company evaluates its service offerings and the demands of its target customers and may amend, change or adjust its service offerings or trial new service offerings as a result. No assurance can be made that these service offerings will be successful or prove to be profitable.

The Company has limited operating history and have launched service in a limited number of metropolitan areas. Accordingly, the Company's performance to date may not be indicative of its future results or its performance in future markets it launches in.

The Company began offering service in May 2010, and it had no revenues before that time. Consequently, the Company has a limited operating and financial history upon which to evaluate its financial performance, business plan execution and ability to succeed in the future. You should consider the Company's prospects in light of the risks, expenses and difficulties it may encounter, including those frequently encountered by new companies competing in rapidly evolving and highly competitive markets. If the Company is unable to execute its plans and grow its business, its financial results will be adversely affected. The Company's business strategy involves expanding into new markets and there can be no assurance that its financial performance in new geographic areas will be as positive as its current markets.

If the Company experiences a higher rate of customer turnover than forecasted, its costs could increase and its revenues could decline, which would reduce its profits.

A higher rate of churn could reduce the Company's revenues and increase its marketing costs to attract the replacement customers required to sustain its business plan, which could reduce its profit margin. In addition, it may not be able to replace customers who leave its service. The Company's rate of customer churn may be affected by several factors, including the following:

- network coverage;
- reliability issues, such as dropped and blocked calls, data speeds and network availability;
- handset problems;
- affordability;
- supplier or vendor failures;
- customer care concerns;
- lack of early access to the newest handsets;
- wireless number portability requirements that allow customers to keep their wireless phone number when switching between service providers;
- the Company's inability to offer bundled services or new services offered by its competitors; and
- competitive offers by third parties.

Unlike many of the Company's competitors, the Company does not require its customers to enter into long-term service contracts. As a result, the Company's customers have the ability to cancel their service at any time without penalty, and therefore the Company's churn rate is expected to be higher than other wireless carriers. In addition, customers could elect to switch to another carrier that has service offerings dependent on newer network technology. The Company cannot assure you that its strategies to address customer churn will be successful. If the Company experiences a high rate of wireless customer churn, seeks to prevent significant customer churn, or fails to replace lost customers, its revenues could decline and its costs could increase which could have a material adverse effect on its business, financial condition and operating results.

The Company's success depends on its ability to attract and retain qualified management and other personnel.

The Company's business is managed by a small number of key executive officers. The loss of one or more of these persons could disrupt its ability to react quickly to business developments and changes in market conditions, which could harm its financial results. The Company believes that its future success will also depend in large part on its continued ability to attract and retain highly qualified executive, technical and management personnel. The Company believes competition for highly qualified management, technical and sales personnel is intense, and there can be no assurance that it will retain its key management, technical and sales employees or that it will be successful in attracting, assimilating or retaining other highly qualified management, technical and sales personnel in the future sufficient to support its continued growth. The Company has occasionally experienced difficulty in recruiting qualified personnel and there can be no assurance that it will not experience such difficulties in the future. The Company's inability to attract or retain highly qualified executive, technical and management personnel could materially and adversely affect its operations.

Demand for the Company's service may be insufficient for it to become profitable.

A major element of the Company's business strategy is to offer consumers a service that allows them to make unlimited local and/or long distance calls from within a local calling area, depending on the service plan selected, and to receive unlimited calls from any area for a flat monthly rate without entering into a long-term service contract. This is a relatively new approach to marketing wireless services and it may not prove to be successful in the long term or deployable in markets the Company may acquire in the future. The Company also has a limited operating and financial history upon which to evaluate its financial performance, business plan execution and ability to succeed in the future. No assurance can be made that customer demand for these service offerings will be successful enough for the Company to become profitable.

The Company's insurance coverage may not cover all of its potential losses, liabilities and damage related to its business.

The amount of insurance coverage on items such as personal property losses, general liability and director and officer liability may not be sufficient to cover all of the Company's potential losses, liabilities and damages related to its business, which could have a material adverse affect on its future business, financial condition, results of operations and prospects.

The Company's employees could form or join a labour union.

None of the Company's employees are members of any labour union and are not party to any collective bargaining or similar agreement with its employees. The Company believes that it has a good relationship with its employees, but no assurance can be made that its current or future employees will not form or join a labour union, which could materially and adversely affect its financial condition and operations.

The Company may engage in unsuccessful acquisitions or divestitures.

Acquisitions of complementary businesses and technologies, development of strategic alliances and divestitures of portions of the Company's business are a part of its overall business strategy. Services, technologies, key personnel or businesses of acquired companies may not be effectively assimilated into the Company's business or service offerings and its alliances may not be successful. The Company may not be able to successfully complete any divestitures on satisfactory terms, if at all. Divestitures may result in a reduction in the Company's total revenues and net income.

The Company may fail to achieve expected revenue growth from new and advanced services.

The Company expects that a substantial portion of its future revenue growth will be achieved from new and advanced services. Accordingly, the Company has invested and continues to invest significant capital resources in the development of its networks in order to offer these services. However, there may not be sufficient consumer demand for these new and advanced services. Alternatively, the Company may fail to anticipate or satisfy demand for certain products and services, or may not be able to offer or market these new products and services successfully to subscribers.

The failure to attract subscribers to new products and services, or failure to keep pace with changing consumer preferences for products and services, would slow revenue growth, increase churn and could have a materially adverse effect on the Company's business, results of operations and financial condition.

There is no guarantee that the Company's service revenue will exceed handset subsidies.

While the Company doesn't incur handset subsidies that are as high as the average post-paid contract model, it do subsidize handsets to ensure competitive pricing and dealer compensation. As a result, the Company may not retain subscribers long enough for revenue to exceed handset subsidy, which would adversely affect its financial performance.

The Company's spectrum capacity in its existing and new markets may be insufficient to meet customer demand or to offer new services that its competitors may be able to offer.

The Company has licenses for only 10 MHz of spectrum in certain of its markets, which is significantly less than most of the wireless carriers with whom its competes. This limited spectrum may require the Company to secure more cell sites to provide equivalent service (including data services) compared to its competitors or to deploy more expensive network equipment sooner than its competitors. The Company's limited spectrum may also limit its ability to support its growth plans without additional technology improvements and/or spectrum, and may make it more reliant on technology advances than its competitors. There is no guarantee the Company can secure adequate tower sites or additional spectrum, or that expected technology improvements will be available to support its business requirements or that the cost of such technology improvements will allow it to remain competitive with other carriers. Competitive carriers in these markets also may take steps prior to the Company launching service to try to attract and its target customers. There also is no guarantee that the operations in the Company's metropolitan areas, which are based on a wholesale model, will be profitable.

Most national wireless carriers have greater spectrum capacity than the Company does, which can be used to support third generation (3G) and fourth generation (4G) services. These national wireless carriers are currently investing substantial capital to deploy the necessary capital equipment to deliver 3G enhanced services. The Company has access to less spectrum than competitive carriers in most of its markets. Such limited spectrum may make it difficult for the Company to simultaneously support its core voice services and 3G/4G services. In addition, the Company may have to invest additional capital and/or acquire additional spectrum to support the delivery of 3G/4G services. There is no guarantee that the Company will be able to provide 3G/4G services on existing spectrum, or will have access to either the spectrum or capital, necessary to provide competitive 3G/4G services in its metropolitan areas, or that its vendors will provide the necessary equipment and software in a timely manner. Moreover, the Company's deployment of 3G/4G services requires technology improvements which may not occur or may be too costly for it to compete.

The Company may require additional spectrum in the future and may be unable to acquire it at a reasonable cost.

Because the Company offers unlimited calling services and data access for a fixed fee, its customers tend, on average, to use more minutes of service and more kilobits of data than the customers of other wireless carriers. The Company believes that the average number of minutes and average number of kilobits its customers use may continue to rise. The Company intends to meet this demand by utilizing spectrum-efficient state-of-the-art technologies. Nevertheless, in the future the Company may need to acquire additional spectrum in order to maintain its service quality and to meet increasing customer demands. However, the Company cannot be sure that additional spectrum will be made available by Industry Canada on a timely basis or at a reasonable cost. If the additional spectrum is unavailable when needed or at a reasonable cost, the Company's ability to grow its customer base may be materially adversely affected.

Unauthorized use of, or interference with, the Company's network could disrupt service and increase its costs.

The Company may incur costs associated with the unauthorized use of its network including administrative and capital costs associated with detecting, monitoring and reducing the incidence of fraud. Fraudulent use of the Company's network may impact interconnection and long-distance costs, capacity costs, administrative costs, fraud prevention costs and payments to other carriers for fraudulent roaming. Such increased costs could have a material adverse impact on the Company's financial results.

It may be difficult to procure handsets in the AWS spectrum band.

The AWS spectrum requires modified or new equipment and handsets. The Company does not manufacture or develop its own equipment or handsets and are dependent on third party manufacturers to design, develop and manufacture such equipment. It may be difficult to procure such handsets and the Company's ability to grow its customer base and meet its customers' demands may be materially adversely affected. In addition, should the proposed merger, announced on March 20, 2011, of T-Mobile and AT&T close, the merged entity may choose not to continue acquiring subscribers in the AWS band in the United States. As such, the volume of handsets being manufactured in the AWS band may decrease.

Risks and Uncertainties Generated by Legal and Regulatory Matters

Changes in government regulations could adversely affect the Company's results of operations.

Substantially all of the Company's business activities are regulated by Industry Canada and/or the CRTC, and accordingly its results of operations could be adversely affected by changes in regulations and by the decisions of these regulators. This regulation relates to, among other things, licensing, competition, the rates the Company pays to access third party networks, roaming on other networks, its operation and ownership of communications systems and its ability to acquire an interest in other communications systems. In addition, the costs of providing services may be increased from time to time as a result of compliance with industry or legislative initiatives to address consumer protection concerns. The Company's wireless license may not generally be transferred without regulatory approval.

Generally, the Company's licenses are granted for a specified term and are subject to conditions on the maintenance of these licenses. These licensing conditions may be modified at any time by the regulators. The regulators may decide not to renew a license when it expires and any failure by the Company to comply with the conditions on the maintenance of a license could result in a revocation or forfeiture of any of its licenses or the imposition of fines.

The licenses include conditions requiring the Company to comply with Canadian ownership restrictions of the applicable legislation. The Company is currently in compliance with all of these Canadian ownership and control requirements. However, if these requirements are violated, the Company would be subject to various penalties, possibly including, in the extreme case, the loss of a license.

Spectrum fees may increase with the renewal of spectrum licenses.

On March 14, 2011, Industry Canada released the "Renewal Process for Cellular and Personal Communications Services (PCS) Spectrum Licenses" which indicated renewal term lengths, annual fees and other requirements for owners of PCS and Cellular spectrum licenses. The annual fees are being maintained at current levels for the time being. The duration of the freeze is not known. The Company is uncertain whether annual or term fees will be applied to AWS licenses upon the expiration of the current term, and if so, such fees may have a material impact upon the Company's operating costs.

Concerns about radio frequency emissions may adversely affect the Company's business.
Occasionally, media and other reports have highlighted alleged links between radio frequency emissions from wireless handsets and various health concerns, including cancer, and interference with various medical devices, including hearing aids and pacemakers. While there are no definitive reports or studies stating that such health issues are directly attributable to radio frequency emissions, concerns over radio frequency emissions may discourage the use of wireless handsets or expose us to potential litigation. It is also possible that future regulatory actions may result in the imposition of more restrictive standards on radio frequency emissions from low powered devices, such as wireless handsets. The Company is unable to predict the nature or extent of any such potential restrictions.

The Company may be subject to claims of infringement regarding telecommunications technologies that are protected by patents and other intellectual property rights.

Telecommunications technologies are protected by a wide array of patents and other intellectual property rights. As a result, third parties may assert infringement claims against the Company from time to time based on its general business operations, the equipment, software or services it uses or provides, or the specific operation of its wireless networks. The Company generally has indemnification agreements with the manufacturers, licensors and suppliers who provide it with the equipment, software and technology that it uses in its business to protect it against possible infringement claims, but it cannot guarantee that it will be fully protected against all losses associated with an infringement claim. Moreover, the Company may be subject to claims that products, software and services provided by different vendors in combination may infringe the rights of third parties and it may not have any indemnification protection from its vendors for these claims. Further, the Company may be subject to claims that certain business processes it uses may infringe the rights of third parties, and it may have no indemnification rights from any of its vendors or suppliers. Whether or not an infringement claim is valid or successful, it could adversely affect the Company's business by diverting management's attention, involving it in costly and time-consuming litigation, requiring it to enter into royalty or licensing agreements (which may not be available on acceptable terms, or at all), that require it to pay royalties for prior periods, or requiring it to redesign its business operations, processes or systems to avoid claims of infringement. If a claim is found to be valid, it could disrupt the Company's business and cause it to incur losses of customers or revenues which could be material.

Wireless long-distance equal access could increase competition.

Although not currently under review, the issue of long-distance equal access for wireless carriers may come under regulatory scrutiny. If required, this may introduce additional competition in the provision of wireless long-distance thus impacting the Company's long-distance revenues.

Restrictions on the use of wireless handsets while driving may reduce subscriber usage.

Most provincial government bodies have introduced and/or enacted legislation to restrict or prohibit wireless handset usage while driving while permitting hands-free usage. During 2010, Yukon, New Brunswick and Alberta passed legislation. The effective date for the latter two provinces has not been set, but is expected to be in mid-2011. The only Canadian jurisdictions currently not having this type of legislation are Nunavut and the Northwest Territories.

Some studies have indicated that certain aspects of using wireless handsets while driving may impair the attention of drivers in various circumstances, making accidents more likely. Laws prohibiting or restricting the use of wireless handsets while driving could have the effect of reducing subscriber usage, which could cause an adverse effect on the Company's business. Additionally, concerns over the use of wireless handsets while driving could lead to litigation relating to accidents, deaths or bodily injuries, which could also have an adverse effect on the Company's business.

The national wireless Tower Policy could increase the Company's costs or delay the expansion of its networks.

In June 2007, Industry Canada released a Tower Policy (CPC-2-0-03) outlining an antenna siting policy that took effect on January 1, 2008. The policy affects all parties that plan to install or modify an antenna system, including PCS, cellular and broadcasting service providers. Among other things, the policy requires that antenna proponents must consider the use of existing antenna structures before proposing new structures and owners of existing systems must respond to sharing requests. Antenna proponents must also undertake public notification using defined processes and must address local requirements and concerns. Certain types of antenna installations are excluded from the requirement to consult with local authorities and the public. Should the Company need to locate a tower but are unable to secure appropriate cooperation agreements with other wireless providers or is unable to receive municipal or public consent it could adversely affect the customer service provided to its customers, which may adversely affect its financial performance in the future.

Risks and Uncertainties Related to the Offering and the Company's Indebtedness

The Company's substantial debt could adversely affect its cash flow and prevent it from fulfilling its obligations under the Notes.

The Company has now, and will continue to have after the Offering and the Additional Offering, a significant amount of debt. As of December 31, 2010, assuming the Company had completed the offering of the Notes and the Additional Debentures, the borrowings under its anticipated new Notes and Additional Debentures and the repayment of the Credit Facility, it would have had approximately $300.8 million of total debt.

The Company's substantial amount of debt could have important material consequences to you. For example, it could:

- make it more difficult for the Company to satisfy its obligations under the Notes and the Debentures;
- increase the Company vulnerability to general adverse economic and industry conditions;
- require the Company to dedicate a substantial portion of its cash flow from operations to make interest and principal payment on its debt, limiting the availability of its cash flow to fund future capital expenditures for existing or new markets, working capital and other general corporate purposes;
- limit the Company's flexibility in planning for, or reacting to, changes in its business and the telecommunications industry;
- limit the Company's ability to purchase additional spectrum or develop new metropolitan areas in the future;
- place the Company at a competitive disadvantage compared with competitors that have less debt; and
- limit the Company's ability to borrow additional funds, even when necessary to maintain adequate liquidity.

Despite the Company's anticipated levels of debt, it may still be able to incur substantially more debt. This could further exacerbate the risks associated with its substantial debt.

To service the Company's debt, the Company will require a significant amount of cash, which may not be available to it.

The Company's ability to meet its existing or future debt obligations and to reduce its indebtedness will depend on its future performance and the other cash requirements of its business. The Company's performance, to a certain extent, is subject to general economic conditions, financial, competitive, business, political, regulatory and other factors that are beyond its control. In addition, the Company's ability to borrow funds in the future to make payment on its debt will depend on the satisfaction of covenants in the notes offered hereby, other debt agreements and other agreements its may enter into in the future. Specifically, the Company will need to maintain certain financial ratios and satisfy financial condition tests. The Company cannot assure you that it will generate sufficient cash flow from operations or that future borrowings will be available to it under the Quadrangle Facility or from other sources in an amount sufficient to enable it to repay all of its indebtedness timely. Disruptions in the capital or financial markets or the general amount of debt refinancings occurring at the same time could make it more difficult to obtain debt or equity financing on reasonable terms or at all. The Company cannot assure you that it will be able to service its debt or refinance any or all of its indebtedness on favorable or commercially reasonable terms, or at all.

The Company may require additional capital in the future and no assurance can be given that such capital will be available at all or available on terms acceptable to it.

The Company makes, and will continue to make, substantial capital expenditures related to purchasing additional spectrum and planning for, or reacting to, changes in its business and the telecommunications industry. Historically, the Company has financed these expenditures through a combination of debt and equity. The Company may have further capital requirements to the extent it decides to purchase additional spectrum, expand its activities and operations, or take advantage of opportunities for acquisitions, joint ventures or other business opportunities that may be presented to it or of which it may become aware. In that regard, the proceeds from the Offering and the Additional Offering that will be applied to the Company's projects may not be sufficient. In addition, the Company may incur major unanticipated liabilities or expenses. There can be no assurance that the Company will be able to obtain necessary financing in a timely manner on acceptable terms, if at all, should the need arise.

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.

Upon the occurrence of certain kinds of change of control events, the Company will be required to offer to repurchase all outstanding Notes and Debentures at 101% of the principal amount thereof plus accrued and unpaid interest, if any, to the date of repurchase, unless all the Notes or Debentures have been previously called for redemption. Any holders of other debt securities that the Company may issue in the future may also have this right. The Company's failure to purchase tendered Notes or Debentures would constitute an event of default under the indentures governing the Notes and Debentures, which in turn would constitute a default under other indebtedness. It is possible that the Company would not have sufficient funds at the time of the change of control to make the required purchase of the Notes and Debentures.

The rights of noteholders in the collateral may be adversely affected by the failure to perfect security interests in the collateral and other issues generally associated with the realization of security interests in the collateral.

Applicable law requires that a security interest in certain tangible and intangible assets can only be properly perfected and its priority retained through certain actions undertaken by the secured party. The liens on the Collateral from time to time owned by the Company securing obligations under the notes may not be perfected if the Collateral Agent has not taken the actions necessary to perfect any of those liens upon or prior to the issuance of the notes. The inability or failure of the collateral agent to promptly take all actions necessary to create properly perfected security interests in the collateral may result in the loss of the priority, or a defect in the perfection, of the security interest for the benefit of the noteholders to which they would have been otherwise entitled.

In addition, applicable law requires that certain property and rights acquired after the grant of a general security interest can only be perfected at the time such property and rights are acquired and identified.

The Company may not be obligated to perfect the security interest of the noteholders in specified collateral. The Company cannot assure you that the Collateral Agent will monitor, or that it will inform such collateral agent of, the future acquisition of property and rights that constitute Collateral, and that the necessary action will be taken to properly perfect the security interest in such after acquired Collateral. The Collateral Agent for the notes has no obligation to monitor the acquisition of additional property or rights that constitute collateral or the perfection of any security interest. Such failure may result in the loss of the security interest in the Collateral or the priority of the security interest in favour of the Notes against third parties. The security interest of the collateral agent could be subject to practical challenges generally associated with the realization of security interests in the collateral. For example, the Collateral Agent may need to obtain the consent of a third party to obtain or enforce a security interest in an asset. The Company cannot assure you that the Collateral Agent will be able to obtain any such consent or that the consents of any third parties will be given when required to facilitate a foreclosure or enforcement on such assets. As a result, the collateral agent may not have the ability to foreclose or enforce upon those assets and the value of the Collateral may significantly decrease. In addition, if the Collateral Agent forecloses or enforces on the Company's assets, it may constitute a change of control or assignment under its long-term or other contracts with its customers, and the counterparties may be entitled to amend or terminate the contracts, which could adversely affect the value of the Collateral.

Limitations on the ability to foreclose on the Collateral.

Certain of the Collateral securing the Notes may not be transferrable. In particular, 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. As such, there may be practical problems associated with the realization of the Collateral Agent's lien on the Collateral generally.

Certain bankruptcy and insolvency laws may impair the trustee's ability to receive payment and enforce remedies under the Notes and Debentures.

The rights of the trustee to enforce remedies may be significantly impaired by the provisions of applicable Canadian bankruptcy, insolvency, and other restructuring legislation if the Company becomes subject to such legislation. For example, both the *Bankruptcy and Insolvency Act* (Canada) 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 and to prepare and file a proposal or plan for consideration by all or some of its creditors to be voted on by the various classes of its creditors. Such a proposal or plan, if accepted by the requisite majorities of creditors and approved by the court, may be binding on persons, such as holders of the Notes or Debentures, who may not otherwise be willing to accept it. Moreover, this legislation permits, in certain circumstances, an insolvent debtor to retain possession and administration of its property, even though it may be in default under the applicable debt instrument.

The powers of the court under the *Bankruptcy and Insolvency Act* (Canada) and particularly under the CCAA have been exercised broadly to protect a restructuring entity from actions taken by creditors and other parties. Accordingly, if the Company were to become subject to such Canadian bankruptcy or insolvency legislation, following commencement of or during such a proceeding, payments under the Notes or Debentures may be stayed or discontinued, the trustee may be unable to exercise its rights under the indenture (including in relation to Collateral securing the Notes) and holders of the notes may not be compensated for any delays in payments, if any, of principal and interest.

If the Company were to file for protection under, or otherwise become subject to, a bankruptcy or restructuring statute, the ability of the trustee and holders of the Notes to realize upon the Collateral will be subject to certain bankruptcy and insolvency law limitations.

The ability of the Collateral Agent to realize upon the Collateral will be subject to certain bankruptcy and insolvency law limitations if the Company were to file for protection under (or otherwise become subject to) a bankruptcy or restructuring statute.

Under the CCAA, secured creditors may be stayed or prevented from repossessing their security from a debtor company in a CCAA proceeding without approval from the court supervising the proceeding, and may be prevented from disposing of security repossessed from such debtor without court approval. In CCAA proceedings, the debtor may continue to retain collateral, including cash collateral, even though the debtor is in default under applicable debt instruments. Courts under the CCAA have broad discretion, and may utilize this discretion to order in the Initial Order that commences proceedings under the CCAA, or in subsequent orders, that the collateral held by a secured creditor is not to be diminished in value during the CCAA proceedings.

However, this power is discretionary, and the Company cannot predict when, or whether, the Collateral Agent could realize upon the Collateral, or whether, or to what extent, holders of Notes would be compensated for any delay in payment or loss of value of the Collateral.

Canadian bankruptcy and insolvency laws or provincial preference or fraudulent transfer laws may affect the validity and/or priority of the Notes, guarantees or Debentures.

Where a debtor deals with its property in a manner that prejudices its creditors (particularly, where such debtor is or becomes thereafter insolvent), such transactions by the debtor may be subject to challenge by creditors and the scrutiny of the court. Under Canadian federal and provincial law, for example, there are a number of statutory means to challenge or void such transactions, such as fraudulent transfer laws, preference laws and oppression laws. Where a transaction subject to challenge is held to be contrary to Canadian federal or provincial law, the transaction can be voided or subject to a variety or other remedies. For example, under the *Bankruptcy and Insolvency Act* (Canada) a voidable preference occurs when an insolvent person pays one or more creditors and such payment results in a preference with respect to such creditors. Under the *Bankruptcy and Insolvency Act* (Canada) a "transfer at undervalue" occurs where there is a transfer of property or provision of services by the debtor for which no value or conspicuously less than fair market value is received. These and other statutory means to challenge transactions have various prescribed "look back" periods, during which the transaction subject to attack must have taken place. In certain circumstances, these "look back" periods may be unlimited.

Should the issuance of or the payment on the Notes or Debentures or any guarantees be subject to attack under these preference and fraudulent transfer laws, the validity and/or priority of the Notes or Debentures or guarantees could be impaired.

The measures of insolvency for purposes of these preference and impeachable transaction laws will vary depending upon the law applied in any such proceeding and upon the valuation assumptions and methodology applied by the court. Generally, however, a party would be considered insolvent if:

- it is unable to meet its obligations as they generally become due;
- it has ceased meeting its current obligations in the ordinary course of business as they generally become due; or
- the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its liabilities, due and accruing due.

The Company cannot assure you, however, as to what standard a court would apply in making the relevant determinations or that a court would agree with its conclusions in this regard. Also, as a general matter, under Canadian bankruptcy and insolvency law, an issuer's liabilities in respect of the Notes or Debentures may, in the event of a bankruptcy or insolvency proceeding or similar proceeding, rank junior to certain of such issuer's debts that may be entitled to priority under the laws of such jurisdiction. For example, under Canadian bankruptcy and insolvency laws, debts entitled to priority may include, but are not limited to, (i) employee-related claims; (ii) pension-related claims; (iii) governmental claims, including taxing authorities; and (iv) costs of administration of the bankruptcy or insolvency proceeding including counsel costs. In addition, in some jurisdictions, an examiner, administrator or representative counsel may be required or appointed to consider the interests of third parties (including, for example, employees) or the best interests of the relevant company in connection with the proceeding. In certain cases, the ability of a holder to collect interest accruing on the Notes or Debentures in respect of any period after the commencement of bankruptcy or insolvency proceedings may be limited.

The value of the Collateral securing the Notes may not be sufficient to secure post-petition interest.

In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding against the Company, holders of the Notes will only be entitled to post-petition interest under Canadian insolvency laws to the extent that the value of their security interest in the Collateral is greater than their pre-bankruptcy claim. Holders of the Notes that have a security interest in collateral with a value equal or less than their pre-bankruptcy claim will not be entitled to post-petition interest under Canadian insolvency laws. No appraisal of the fair market value of the Collateral has been prepared in connection with the Offering and therefore the value of the noteholders' interest in the collateral may not equal or exceed the principal amount of the Notes.

The Collateral is subject to casualty risks, which may limit your ability to recover as a secured creditor if there are losses to the Collateral, and which may have an adverse impact on the Company's operations and results.

The indenture governing the Notes and the security documents will require the Company to maintain adequate insurance or otherwise insure against risks to the extent customary for companies in the same or similar business operating in the same or similar locations. There are, however, certain losses, including losses resulting from terrorist acts that may be either uninsurable or not economically insurable, in whole or in part. As a result, in the event of a loss of all or part of the Company's assets, the Company cannot assure you that the insurance proceeds will compensate us fully for its losses. If there is a total or partial loss of any of the Collateral, the Company cannot assure you that any insurance proceeds received by it will be sufficient to satisfy all of its obligations, including the Notes.

In addition, a loss of collateral would impact the Company's operations, which could limit its ability to pay obligations due on the Notes.

The Notes are denominated in Canadian dollars, and all payments in respect of the Notes are to be in Canadian dollars, which exposes U.S. purchasers of the Notes or Debentures to certain exchange rate risks.

An investment in the Notes or Debentures, which are denominated in, and all payments in respect of which are to be made in, Canadian dollars entails significant risks to a U.S. purchaser or an investor whose functional currency is the U.S. dollar, which risks are not associated with a similar investment in a security denominated in U.S. dollars. Such risks include, without limitation, the possibility of significant changes in rates of exchange between the U.S. dollar and the Canadian dollar and the possibility of the imposition or modification of foreign exchange controls with respect to the Canadian dollar. Such risks generally depend on economic and political events over which the Company has no control. In recent years, rates of exchange for certain currencies have been highly volatile and such volatility may be expected to continue in the future. Fluctuations in any particular exchange rate that have occurred in the past are not necessarily indicative, however, of fluctuations in such rate that may occur during the term of the Notes or Debentures. Depreciation of the Canadian dollar against the U.S. dollar could result in a decrease in the effective yield of the Notes or Debentures and, in certain circumstances, could result in a loss to the investor on a U.S. dollar basis. The description of foreign currency risks does not describe all the risks of an investment in securities denominated in a currency other than U.S. dollars. Prospective investors should consult their own financial and legal advisors as to the risks involved in an investment in the Notes or Debentures.

There is no public market for the Company's Notes or Debentures.

There is currently no established trading market for the Notes or Debentures. The Notes and Debentures will not be listed on any exchange or quotation system and consequently, there is no market through which the Notes or Debentures may be sold and purchasers may not be able to resell their Notes or Debentures. This may affect the price of the Notes or Debentures in the secondary market, the liquidity of the Notes or Debentures and the transparency of trading prices. The Company has been informed by the Underwriters that they currently intend to make a market in the Notes or Debentures. However, they are under no obligation to do so, and, if they do make a market in the Notes or Debentures, they may cease their marketmaking at any time without notice. Accordingly, the Company cannot assure you of the liquidity of the market for the Notes or Debentures or the prices at which you may be able to sell the Notes or Debentures. The liquidity of any market for the Notes or Debentures will depend upon the number of holders of the Notes, the interest of securities dealers in making a market in the Notes or Debentures, prevailing interest rates, the market for similar securities and other factors, including general economic conditions, the Company's financial condition and performance, and its prospects.

You may only transfer your Notes or Debentures in a transaction exempt from the applicable securities laws of the provinces or territories of Canada. In the United States, you may only transfer the Notes or Debentures in a transaction registered under or exempt from the registration requirements of the 1933 Act.

The Company is relying on exemptions from applicable Canadian provincial securities laws to offer and sell the Notes and Debentures. The Notes and Debentures may not be sold, directly or indirectly, in Canada except in accordance with applicable securities laws of the provinces and territories of Canada. In addition, the Company is not, and does not currently intend to become, a reporting issuer in Canada. As a result, the Notes and Debentures offered hereby are subject to restrictions on transfer and are not, and will not become, freely tradable in Canada. In addition, the Company is relying upon an exemption from registration under the 1933 Act and applicable state securities laws to offer the Notes and Debentures within the United States and to U.S. persons. The Notes and Debentures may be transferred or resold only in a transaction registered under, or exempt from, the 1933 Act and applicable state securities laws. The absence of an active market for the Notes and Debentures could adversely affect the market price and liquidity of the Notes and Debentures. Moreover, the market for non-investment grade debt has historically, including recently, been subject to disruptions that have caused volatility in prices. It is possible that the market for the Notes and Debentures will be subject to disruptions. Any such disruptions may have a negative effect on your ability to sell the Notes or and Debentures regardless of its prospects and financial performance.

U.S. investors in the Notes or Debentures may have difficulties enforcing civil liabilities.

The Company is incorporated under the laws of the Province of Ontario. Substantially all of its directors, controlling persons and officers, as well as certain of the experts named in this offering memorandum, are residents of Canada or other jurisdictions outside the United States, and all or a substantial portion of their assets and substantially all of its assets are located outside the United States. It may be difficult for holders of Notes or Debentures to effect service of process within the United States upon directors, officers and experts who are not residents of the United States or to enforce against the Company or them in the United States upon judgments of courts of the United States predicated upon civil liability under U.S. federal or state securities laws or other laws of the United States. In addition, there is doubt as to the enforceability in Canada against the Company or against its directors, officers and experts who are not residents of the United States, in original actions or in actions for enforcement of judgments of courts of the United States, of liabilities predicated solely upon U.S. federal or state securities laws.

Restrictive covenants in the Company's outstanding debt instruments may reduce its operating and financial flexibility, which may prevent it from capitalizing on certain business opportunities.

The terms of the Company's existing indebtedness contain a number of operating and financial covenants restricting its ability to, among other things:

- incur additional debt, including guarantees by its restricted subsidiaries;
- pay dividends and make other restricted payments;
- create or permit certain liens;
- use the proceeds from sales of assets and subsidiary stock;
- create or permit restrictions on the ability of the Company's restricted subsidiaries, if any, to pay dividends or make other distributions;
- engage in certain transactions with affiliates;
- enter into sale and leaseback transactions; and
- enter into mergers, consolidations and transfers of all or substantially all of the Company's assets.

The Company's failure to comply with these covenants could result in an event of default which could, if not cured or waived, result in an acceleration of its debt and cause cross-defaults under its other debt. If the Company's indebtedness is accelerated, it may not be able to repay its indebtedness or borrow sufficient funds to refinance it, and any such prepayment or refinancing could adversely affect its financial condition. In addition, if the Company incurs additional debt in the future, it may be subject to additional covenants, which may be more restrictive than those to which it is currently subject. Even if the Company is able to comply with all applicable covenants, the restrictions on its ability to manage its business in its sole discretion could adversely affect its business by, among other things, limiting its ability to take advantage of financings, mergers, acquisitions and other corporate opportunities that it believe would be beneficial to it.

The Company's success depends on important contributions made by its shareholders.

The Company believes that its current and future success depends in large part on the continued commitment of its shareholders to provide important resources and support to its management personnel, including industry experience and relationships, financial resources and access to capital. There can be no assurance that the Company's shareholders will remain active and invested in its business and its operations, or that they will continue to provide such resources, which could materially and adversely affect its operations.

The Company is controlled by Quadrangle and Obelysk.

The Company is, indirectly, owned by two shareholders, Quadrangle and Obelysk , whose interests may conflict with the interests of the holders of its Notes or Debentures. In addition, actions taken by the Company's shareholders, as well as their financial condition, matters over which it has no control, may affect it.

Risks and Uncertainties Related to the Additional Offering and the Additional Debentures

The Additional Debentures will be unsecured and effectively subordinated to the Company's existing and future secured indebtedness and structurally subordinated to any future indebtedness and other liabilities of its non-guarantor subsidiaries.

The Additional Debentures will be subordinated in the manner described in the section of this offering memorandum titled "Description of the Debentures – Ranking and Subordination".

If the Company or a subsidiary guarantor is declared bankrupt, becomes insolvent or is liquidated or reorganized, any secured debt of the Company, including under the Notes, or that subsidiary guarantor will be entitled to be paid in full from its assets or the assets of the guarantor, as applicable, securing that debt before any payment may be made with respect to the Additional Debentures or the affected guarantees. Holders of the Additional Debentures will participate ratably in any remaining assets with all holders of the Company's unsecured indebtedness that does not rank junior to the Additional Debentures, including all of the Company's other general creditors, based upon the respective amounts owed to each holder or creditor. In any of the foregoing events, there may not be sufficient assets to pay the indebtedness and other obligations that rank senior to the Additional Debentures and the amounts due on the Additional Debentures. As a result, holders of the Additional Debentures would likely receive less, ratably, than holders of secured indebtedness. It is possible that there will be no assets from which claims of holders of the Additional Debentures can be satisfied.

In addition, creditors of current and future subsidiaries that do not guarantee the Additional Debentures will have claims, with respect to the assets of those subsidiaries, that rank structurally senior to the Additional Debentures. In the event of any distribution or payment of assets of such subsidiaries in any dissolution, winding up, liquidation, reorganization, or other bankruptcy proceeding, the claims of those creditors must be satisfied prior to making any such distribution or payment to us in respect of its direct or indirect equity interests in such subsidiaries.

LEGAL MATTERS

Certain legal matters in connection with this offering will be passed upon for the Company by Stikeman Elliott LLP, Toronto, Ontario, and for the Underwriters by Goodmans LLP.

INDEPENDENT ACCOUNTANTS

The financial statements of the Company for the years ended December 31, 2009 and December 31, 2010, have been audited by PricewaterhouseCoopers LLP, Chartered Accountants.

STATUTORY RIGHTS OF ACTION FOR DAMAGES OR RESCISSION

Purchasers of Notes in Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan have statutory rights of action that are described below. Purchasers of Notes and Additional Debentures in Alberta, British Columbia, and Québec will be entitled to contractual rights of action for damages or rescission similar to the statutory rights provided to purchasers in Ontario. These rights are in addition to, and do not derogate from, any other right or remedy that purchasers may have at law.

The following summary is subject to the express provisions of the relevant securities legislation and the rules, regulations, and instruments applicable in Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan, which may contain other limitations and statutory defences on which the issuer may rely.

For the purposes of the following, "**Misrepresentation**" means (a) an untrue statement of a material fact, (b) an omission to state a material fact that is required to be stated, or (c) an omission to state a material fact that is necessary to be stated in order for a statement not to be misleading.

Manitoba

If an offering memorandum contains a Misrepresentation, a purchaser who purchases a security offered by the offering memorandum is deemed to have relied on the representation if it was a Misrepresentation at the time of purchase and has a right of action for damages against

(a) the issuer, and

(i) every director of the issuer at the date of the offering memorandum, and

(ii) a right of rescission against the issuer,

(b) and if the purchaser chooses to exercise a right of rescission against the issuer, the purchaser has no right of action for damages.

No person or company is liable for a Misrepresentation contained in an offering memorandum if the person or company proves that the purchaser had knowledge of the Misrepresentation, and no person or company other than the issuer is liable for a Misrepresentation contained in an offering memorandum

(a) if the person or company proves

(i) that the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent, and

(ii) that, after becoming aware that it was sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the person's or company's knowledge and consent;

(b) if the person or company proves that, after becoming aware of the Misrepresentation, the person or company withdrew the person's or company's consent to the offering memorandum and gave reasonable notice to the issuer of the withdrawal and the reason for it;

(c) if, with respect to any part of the offering memorandum purporting to be made on the authority of an expert or to be a copy of, or an extract from, an expert's report, opinion, or statement, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that

(i) there had been a Misrepresentation, or

(ii) the relevant part of the offering memorandum

(A) did not fairly represent the expert's report, opinion, or statement, or

(B) was not a fair copy of, or an extract from, the expert's report, opinion, or statement; or

(d) with respect to any part of the offering memorandum not purporting to be made on an expert's authority and not purporting to be a copy of, or an extract from, an expert's report, opinion, or statement, unless the person or company

(i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no Misrepresentation, or

(ii) believed there had been a Misrepresentation.

The right of action is subject to the following limitations:

(a) the amount recoverable shall not exceed the price at which the securities were offered under the offering memorandum; and

(b) in an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the Misrepresentation.

No action may be commenced to enforce a right of action

(a) in the case of an action for rescission, more than 180 days after the day of the transaction that gave rise to the cause of action, or

(b) in any other case, more than

(i) 180 days after the day that the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) two years after the day of the transaction that gave rise to the cause of action,

whichever occurs earlier.

New Brunswick

If an offering memorandum provided to a purchaser of securities contains a Misrepresentation, the purchaser shall be deemed to have relied on the Misrepresentation if it was a Misrepresentation at the time of purchase, and

(a) the purchaser has a right of action for damages against the issuer, or

(b) the purchaser may elect to exercise a right of rescission against the issuer, in which case the purchaser shall have no right of action for damages.

The right of action is subject to the following limitations:

(a) no person is liable for a Misrepresentation if the person proves that the purchaser purchased the securities with knowledge of the Misrepresentation;

(b) in an action for damages, the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the securities as a result of the Misrepresentation relied on; and

(c) in no case shall the amount recoverable exceed the price at which the securities were offered.

No action shall be commenced to enforce a right of action more than

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action, or

(b) in the case of any action other than an action for rescission, the earlier of

(i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, and

(ii) six years after the date of the transaction that gave rise to the cause of the action.

Newfoundland and Labrador

If an offering memorandum contains a Misrepresentation when a person or company purchases a security offered by the offering memorandum, the purchaser has, without regard to whether the purchaser relied on the Misrepresentation, a right of action

(a) for damages against

(i) the issuer, and

(ii) every director of the issuer at the date of the offering memorandum, and

(b) for rescission against the issuer,

and if the purchaser elects to exercise a right of rescission against the issuer, the purchaser has no right of action for damages.

A person or company shall not be liable for a Misrepresentation contained in an offering memorandum if the person or company proves that the purchaser had knowledge of the Misrepresentation, and a person or company other than the issuer shall not be liable for a Misrepresentation contained in an offering memorandum

(a) if the person or company proves that the offering memorandum was sent to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its being sent, the person or company promptly gave reasonable notice to the issuer that it was sent without the knowledge and consent of the person or company;

(b) if the person or company proves that the person or company, on becoming aware of the Misrepresentation in the offering memorandum, withdrew the person's or company's consent to the offering memorandum and gave reasonable notice to the issuer of the withdrawal and the reason for it;

(c) if, with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion, or statement of an expert, the person or company proves that the person or company did not have any reasonable grounds to believe and did not believe that

(i) there had been a Misrepresentation, or

(ii) the relevant part of the offering memorandum

(A) did not fairly represent the report, opinion, or statement of the expert, or

(B) was not a fair copy of, or an extract from, the report, opinion, or statement of the expert; and

(d) with respect to any part of the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, opinion, or statement of an expert, unless the person or company

(i) did not conduct an investigation sufficient to provide reasonable grounds for a belief that there had been no Misrepresentation, or

(ii) believed there had been a Misrepresentation.

The right of action is subject to the following limitations:

(a) the amount recoverable shall not exceed the price at which the securities were offered under the offering memorandum; and

(b) in an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the Misrepresentation.

An action shall not be started to enforce a right of action more than

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action, or

(c) in the case of an action other than an action for rescission, the earlier of

(i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

Nova Scotia

If an offering memorandum sent or delivered to a purchaser contains a Misrepresentation, a purchaser who purchases a security referred to in it is deemed to have relied on that Misrepresentation, if it was a Misrepresentation at the time of purchase, and

(a) has a right of action for damages against

(b) the seller, and

(c) every director of the seller at the date of the offering memorandum, or

(d) may elect to exercise a right of rescission against the seller, in which case the purchaser has no right of action for damages.

No person or company is liable for a Misrepresentation contained in an offering memorandum if the person or company proves that the purchaser purchased the securities with knowledge of the Misrepresentation, and no person or company other than the issuer is liable for a Misrepresentation contained in an offering memorandum if the person or company proves that

(a) the offering memorandum was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(b) after delivery of the offering memorandum and before the purchase of the securities by the purchaser, on becoming aware of any Misrepresentation in the offering memorandum, the person or company withdrew the person's or company's consent to the offering memorandum and gave reasonable general notice of the withdrawal and the reason for it; or

(c) with respect to any part of the offering memorandum purporting

(i) to be made on the authority of an expert, or

(ii) to be a copy of, or an extract from, a report, an opinion, or a statement of an expert,

(iii) the person or company had no reasonable grounds to believe and did not believe that

(iv) there had been a Misrepresentation, or

(v) the relevant part of the offering memorandum

(A) did not fairly represent the report, opinion, or statement of the expert, or

(B) was not a fair copy of, or an extract from, the report, opinion, or statement of the expert.

No person or company is liable with respect to any part of an offering memorandum or amendment to the offering memorandum not purporting

(a) to be made on the authority of an expert, or

(b) to be a copy of, or an extract from, a report, opinion, or statement of an expert,

unless the person or company

(a) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no Misrepresentation, or

(b) believed that there had been a Misrepresentation.

The right of action is subject to the following limitations:

(a) in an action for damages, the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the Misrepresentation;

(b) the amount recoverable by a plaintiff may not exceed the price at which the securities were offered under the offering memorandum; and

(c) no action shall be commenced to enforce the right more than 120 days after the date on which payment was made for the securities.

Ontario

If an offering memorandum contains a Misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution has, without regard to whether the purchaser relied on the Misrepresentation, the following rights:

(a) the purchaser has a right of action for damages against the issuer; and

(b) the purchaser may elect to exercise a right of rescission against the issuer, and if the purchaser exercises this right, the purchaser ceases to have a right of action for damages against the issuer.

The right of action is subject to the following limitations:

(a) no person or company is liable for a Misrepresentation in an offering memorandum if he, she, or it proves that the purchaser purchased the securities with knowledge of the Misrepresentation;

(b) in an action for damages, the defendant is not liable for all or any portion of the damages that the defendant proves do not represent the depreciation in value of the security as a result of the Misrepresentation relied upon;

(c) in no case shall the amount recoverable exceed the price at which the securities were offered; and

(d) if the offering memorandum is delivered to a purchaser to whom securities are distributed, the right of action is applicable unless the purchaser is

  (i) an association governed by the Cooperative Credit Associations Act (Canada) or a central cooperative credit society for which an order has been made under that Act;

  (ii) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services corporation, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

  (iii) an authorized foreign bank named in Schedule III of the Bank Act (Canada);

  (iv) the Business Development Bank of Canada incorporated under the Business Development Bank of Canada Act (Canada); or

  (v) a subsidiary of any person referred to in paragraphs (i), (ii), (iii), and (iv), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by the directors of that subsidiary.

No action shall be commenced to enforce a right more than

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action, or

(b) in the case of any action other than an action for rescission, the earlier of

  (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

  (ii) three years after the date of the transaction that gave rise to the cause of action.

Prince Edward Island

If an offering memorandum contains a Misrepresentation, a purchaser who purchases a security offered by the offering memorandum during the period of distribution

(a) has, without regard to whether the purchaser relied on the Misrepresentation, a right of action for damages against

  (i) the issuer, and

  (ii) every director of the issuer at the date of the offering memorandum, and

(b) has a right of action for rescission against the issuer, and if the purchaser elects to exercise a right of action for rescission, the purchaser shall have no right of action for damages.

A person is not liable for a Misrepresentation contained in an offering memorandum if the person proves that the purchaser purchased the securities with knowledge of the Misrepresentation, and a person other than the issuer is not liable for a Misrepresentation contained in an offering memorandum if the person proves that

(a) the offering memorandum was sent to the purchaser without the person's knowledge or consent and that, on becoming aware of its being sent, the person had promptly given reasonable notice to the issuer that it had been sent without the knowledge and consent of the person;

(b) the person, on becoming aware of the Misrepresentation in the offering memorandum, had withdrawn the person's consent to the offering memorandum and had given reasonable notice to the issuer of the withdrawal and the reason for it; or

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of, or an extract from, a report, statement, or opinion of an expert, the person had no reasonable grounds to believe and did not believe that

   (i) there had been a misrepresentation, or

   (ii) the relevant part of the offering memorandum

      (A) did not fairly represent the report, statement, or opinion of the expert, or

      (B) was not a fair copy of, or an extract from, the report, statement, or opinion of the expert.

A person other than the issuer is not liable with respect to any part of an offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of, or an extract from, a report, statement, or opinion of an expert, unless the person

(a) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no Misrepresentation, or

(b) believed that there had been a Misrepresentation.

The right of action is subject to the following limitations:

(a) in an action for damages, the defendant is not liable for any damages that the defendant proves do not represent the depreciation in value of the security resulting from the Misrepresentation; and

(b) the amount recoverable by a plaintiff must not exceed the price at which the securities purchased by the plaintiff were offered.

No action may be commenced to enforce a right more than

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action, or

(b) in the case of any action other than an action for rescission,

   (i) 180 days after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction giving rise to the cause of action,

whichever period expires first.

Saskatchewan

If an offering memorandum sent or delivered to a purchaser contains a Misrepresentation, a purchaser who purchases a security covered by the offering memorandum has, without regard to whether the purchaser relied on the Misrepresentation, a right of action for damages against

(a) the issuer,

(b) every promoter and director of the issuer at the time the offering memorandum was sent or delivered,

(c) every person or company whose consent has been filed respecting the offering, but only with respect to reports, opinions, or statements that have been made by them, and

(d) every person who or company that sells securities on behalf of the issuer under the offering memorandum.

If a purchaser purchased the security from the issuer, the purchaser may elect to exercise a right of rescission against the issuer and, when the purchaser so elects, the purchaser shall have no right of action for damages against the issuer.

No person or company is liable for a Misrepresentation contained in an offering memorandum if the person or company proves that the purchaser purchased the securities with knowledge of the Misrepresentation, and no person or company other than the issuer is liable for a Misrepresentation contained in an offering memorandum if the person or company proves that

(a) the offering memorandum was sent or delivered without the person's or company's knowledge or consent and that, on becoming aware of its being sent or delivered, the person or company immediately gave reasonable general notice that it was so sent or delivered;

(b) after the filing of the offering memorandum and before the purchase of the securities by the purchaser, on becoming aware of any Misrepresentation in the offering memorandum, the person or company withdrew the person's or company's consent to it and gave reasonable general notice of the person's or company's withdrawal and the reason for it;

(c) with respect to any part of the offering memorandum purporting to be made on the authority of an expert or purporting to be a copy of or an extract from a report, opinion, or statement of an expert, the person or company had no reasonable grounds to believe and did not believe that

(i) there had been a Misrepresentation,

(ii) the part of the offering memorandum did not fairly represent the report, opinion, or statement of the expert, or

(iii) the part of the offering memorandum was not a fair copy of or extract from the report, opinion, or statement of the expert;

(d) with respect to any part of the offering memorandum purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion, or statement as an expert that contains a Misrepresentation attributable to failure to represent fairly his, her, or its report, opinion, or statement as an expert

(i) the person or company had, after reasonable investigation, reasonable grounds to believe, and did believe, that the part of the offering memorandum fairly represented the person's or company's report, opinion, or statement, or

(ii) on becoming aware that the part of the offering memorandum did not fairly represent the person's or company's report, opinion, or statement as an expert, the person or company immediately advised the Saskatchewan Securities Commission and gave reasonable general notice that such use had been made of it and that the person or company would not be responsible for that part of the offering memorandum.

The right of action is subject to the following limitations:

(a) no person or company, other than the issuer, is liable for any part of the offering memorandum purporting to be made on the person's or company's own authority as an expert or purporting to be a copy of or an extract from the person's or company's own report, opinion, or statement as an expert unless the person or company

(i) failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no Misrepresentation, or

(ii) believed there had been a Misrepresentation;

(b) no person or company other than the issuer is liable for any part of the offering memorandum not purporting to be made on the authority of an expert and not purporting to be a copy of or an extract from a report, opinion, or statement of an expert unless the person or company

(i) failed to conduct a reasonable investigation sufficient to provide reasonable grounds for a belief that there had been no Misrepresentation, or

(ii) believed there had been a Misrepresentation;

(c) a person or company is not liable if that person or company can establish that he, she, or it cannot reasonably be expected to have had knowledge of any Misrepresentation in the offering memorandum;

(d) in an action for damages, the defendant is not liable for all or any portion of the damages that he, she, or it proves do not represent the depreciation in value of the security resulting from the Misrepresentation relied on; and

(e) in no case shall the amount recoverable exceed the price at which the securities were offered to the public.

No action shall be commenced to enforce a right more than

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action, or

(b) in the case of any action other than an action for rescission, the earlier of

(i) one year after the plaintiff first had knowledge of the facts giving rise to the cause of action, or

(ii) six years after the date of the transaction that gave rise to the cause of action.

FINANCIAL STATEMENTS

Data and Audio-Visual Enterprises Holdings Inc.

Consolidated Financial Statements
December 31, 2010

PRICEWATERHOUSECOOPERS

PricewaterhouseCoopers LLP
Chartered Accountants
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Royal Trust Tower, Suite 3000
Toronto-Dominion Centre
Toronto, Ontario
Canada M5K 1G8
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March 30, 2011

Independent Auditor's Report

To the Board of Directors of
Data and Audio-Visual Enterprises Holdings Inc.

We have audited the accompanying consolidated financial statements of Data & Audio-Visual Enterprises Holding Inc. (the Company) and its subsidiaries, which comprise the consolidated balance sheet as at December 31, 2010, the consolidated statements of comprehensive income, changes in equity and cash flows for the year then ended, and the related notes including a summary of significant accounting policies.

Management's responsibility for the consolidated financial statements
Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with International Financial Reporting Standards, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's responsibility
Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

PRICEWATERHOUSECOOPERS

Opinion

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company and its subsidiaries as at December 31, 2010 and the results of their financial performance and their cash flows for the year then ended in accordance with International Financial Reporting Standards.

PricewaterhouseCoopers LLP

Chartered Accountants, Licensed Public Accountants

Data and Audio-Visual Enterprises Holdings Inc.

Consolidated Balance Sheet
As at December 31, 2010

	2010 $	2009 $
Assets		
Non-current assets		
Intangible assets (note 9)	247,502,934	246,917,513
Property, plant and equipment (note 8)	84,454,833	21,377,496
Total non-current assets	331,957,767	268,295,009
Current assets		
Inventory (note 7)	687,967	-
Trade and other receivables (note 6)	16,113,850	844,754
Prepaid expenses (note 5)	2,895,860	754,926
Cash and cash equivalents	16,772,115	95,290,959
Total current assets	36,469,792	96,890,639
Total assets	368,427,559	365,185,648
Equity		
Ordinary shares (note 12)	250,000,010	250,000,010
Other reserves (note 12)	36,201,821	34,545,559
Retained losses (note 13)	(121,203,206)	(25,174,016)
Total equity	164,998,625	259,371,553
Liabilities		
Non-current liabilities		
Borrowings (note 11)	172,512,650	95,356,785
Current liabilities		
Trade and other payables (note 10)	30,916,284	10,457,310
Total equity and liabilities	368,427,559	365,185,648

Approved by the Board of Directors

____________ Director   ____________ Director

The accompanying notes are an integral part of these consolidated financial statements.

Data and Audio-Visual Enterprises Holdings Inc.

Consolidated Statement of Comprehensive Income

For the year ended December 31, 2010

	2010 $	2009 $
Revenue	9,219,568	-
Cost of services and hardware	(15,237,338)	-
Operating expenses (note 16)	(68,189,858)	(14,236,647)
Operating loss	(74,207,628)	(14,236,647)
Finance income	276,848	19,607
Finance costs (note 11)	(22,098,410)	(1,597,381)
Loss for the year	(96,029,190)	(15,814,421)
Other comprehensive income (loss)	-	-
Total comprehensive loss for the year	(96,029,190)	(15,814,421)

The accompanying notes are an integral part of these consolidated financial statements.

Data and Audio-Visual Enterprises Holdings Inc.

Consolidated Statement of Changes in Equity

For the year ended December 31, 2010

	Ordinary shares				
	Number of shares	**Share capital $**	**Other reserves $**	**Retained losses $**	**Total equity $**
Balance as at January 1, 2009	25,000,001	250,000,010	7,730,000	(9,359,595)	248,370,415
Issuance of ordinary shares (note 12)	200,000	-	2,000,000	-	2,000,000
Issuance of convertible debentures - equity component (note 11)	-	-	12,766,539	-	12,766,539
Issuance of debentures - equity component (note 11)	-	-	11,369,020	-	11,369,020
Share-based payments (note 17)	-	-	680,000	-	680,000
Loss for the year	-	-	-	(15,814,421)	(15,814,421)
Balance as at December 31, 2009	25,200,001	250,000,010	34,545,559	(25,174,016)	259,371,553
Share-based payments (note 17)	-	-	1,656,262	-	1,656,262
Loss for the year	-	-	-	(96,029,190)	(96,029,190)
Balance as at December 31, 2010	25,200,001	250,000,010	36,201,821	(121,203,206)	164,998,625

Data and Audio-Visual Enterprises Holdings Inc.

Consolidated Statement of Cash Flows

For the year ended December 31, 2010

	2010 $	2009 $
Cash flow from operating activities		
Loss for the year	(96,029,190)	(15,814,421)
Items not affecting cash		
Amortization of property, plant and equipment	5,620,263	4,670
Amortization of intangible assets - definite life	122,434	425
Share-based payments (note 17)	1,656,262	680,000
Accrued interest, accretion and amortization of financing cost	20,317,191	-
Changes in non-cash working capital balances		
Trade and other receivables	(15,269,097)	(844,754)
Prepaid expenses and other assets	(2,140,934)	(616,321)
Inventories	(687,967)	-
Trade and other payables	17,464,398	9,192,778
	(68,946,640)	(7,397,623)
Cash flow from investing activities		
Purchase of intangible assets (note 9)	(707,855)	(50,786)
Purchase of property, plant and equipment (note 8)	(65,703,025)	(21,153,838)
	(66,410,880)	(21,204,624)
Cash flow from financing activities		
Proceeds from issuance of convertible debentures and ordinary shares	-	41,632,126
Proceeds from issuance of debentures	-	71,536,215
Proceeds from credit facility (note 11)	56,838,676	8,324,003
	56,838,676	121,492,344
Net change in cash and cash equivalents	(78,518,844)	92,890,097
Cash and cash equivalents - Beginning of year	95,290,959	2,400,862
Cash and cash equivalents - End of year	16,772,115	95,290,959

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements
December 31, 2010

1 General information

Data and Audio-Visual Enterprises Holdings Inc. (the Company or DAVE) was incorporated under the provisions of the Business Corporations Act (Ontario) on March 5, 2008 for the purpose of establishing and operating a Canadian wireless voice and data communications service. The Company commenced its operations in May 2010.

The address of the Company's registered office is 101 Exchange Avenue, Vaughan, Ontario.

2 Summary of significant accounting policies

The principal accounting policies applied in the preparation of these consolidated financial statements are set out below. These policies have been consistently applied to all the periods presented, unless otherwise stated.

Basis of preparation

The consolidated financial statements have been prepared in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board. The consolidated financial statements have been prepared under the historical cost convention, as modified by the revaluation of land and buildings, available-for-sale financial assets, and financial assets and financial liabilities (including derivative instruments) at fair value through profit or loss. The preparation of financial statements in accordance with IFRS requires the use of certain critical accounting estimates. It also requires management to exercise its judgment in the process of applying the Company's accounting policies. The areas involving a higher degree of judgment or complexity, or areas where assumptions and estimates are significant to the consolidated financial statements are disclosed in note 4.

The consolidated financial statements have been prepared on the basis that the Company will continue operating as a going concern, which contemplates the realization of assets and settlement of liabilities and commitments in the normal course of business. These consolidated financial statements do not reflect adjustments in the carrying values of assets and liabilities reported, income and expenses and the balance sheet classifications used that would be necessary if the going concern assumption were not appropriate.

Consolidation

The consolidated financial statements include the accounts of DAVE and its subsidiaries, Data and Audio-Visual Enterprises Wireless Inc. and Data and Audio Visual Enterprises Leasing Inc. All intercompany transactions and balances have been eliminated.

Foreign currency translation

Monetary assets and liabilities arising as a result of foreign currency transactions are translated at rates of exchange prevailing at the consolidated balance sheet date. Revenue and expense items are translated throughout the period at rates of exchange prevailing at the dates of transactions. Foreign currency exchange gains and losses are included in loss for the period.

Cash and cash equivalents

Cash and cash equivalents include cash in hand, deposits held at call with banks, other short-term and highly liquid investments with original maturities of three months or less. Bank overdrafts are shown within borrowings in current liabilities on the consolidated balance sheet.

Trade receivables

Trade receivables are amounts due from customers for merchandise sold or services performed in the ordinary course of business. If collection is expected in one year or less (or in the normal operating cycle of the business if longer), they are classified as current assets. If not, they are presented as non-current assets.

Trade receivables are recognized initially at fair value and subsequently measured at amortized cost using the effective interest method, less provision for impairment.

Inventory

Inventory is stated at the lower of cost and net realisable value. Cost is determined on the basis of weighted average costs.

Impairment

Our tangible and intangible assets are measured using the cost basis and are written down to recoverable amount where their carrying value exceeds recoverable amount.

Assets with an indefinite useful life are not subject to amortization and are tested on an annual basis for impairment, or where an indication of impairment exists. Assets that are subject to amortization are reviewed for impairment wherever events or changes in circumstances indicate that the carrying amount may not be recoverable.

The recoverable amount of an asset is the higher of its fair value less costs to sell or its value in use. Value in use represents the present value of the future amount expected to be recovered through the cash inflows and outflows arising from the asset's continued use and subsequent disposal. The Company recognizes any reduction in the carrying value as a charge in the consolidated statement of comprehensive income in the reporting period in which the impairment loss occurs.

In determining value in use, the Company applies management judgment in establishing forecasts of future operating performance, as well as the selection of growth rates, terminal rates and discount rates. These judgments are applied based on our understanding of historical information and expectations of future performance.

The expected net cash flows included in determining recoverable amounts of our assets are discounted to present values using a market determined, risk adjusted, discount rate. When determining an appropriate discount rate, the Company uses the weighted average cost of capital (WACC) as an initial point of reference, adjusted for specific risks associated with each different category of assets assessed.

For assets that do not generate largely independent cash inflows, the recoverable amount is determined for the cash generating unit (CGU) to which that asset belongs. The Company's CGUs are determined according to the lowest level of aggregation and the assets involved generate largely independent cash inflows.

The Company applies management judgment to establish our CGUs. The Company has determined that assets which form part of our ubiquitous telecommunications network work together to generate net cash flows. No one item of telecommunications equipment is of any value without the other assets to which it is connected in order to achieve the delivery of products and services. As a result, the Company has determined that the ubiquitous telecommunications network is a single CGU (DAVE Entity CGU).

Property, plant and equipment

The cost of property, plant and equipment corresponds to their purchase or production cost, including costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

The cost of networks includes design and construction costs, as well as capacity improvement costs.

The total cost of an asset is allocated among its different components. Each component is accounted for separately when the components have different useful lives or when the pattern in which their future economic benefits are expected to be consumed by the entity varies.

Maintenance and repair costs are expensed as incurred, except where they serve to increase the asset's productivity or prolong its useful life.

Borrowing costs are recognized as an expense in the period in which they are incurred, except to the extent that they are directly attributable to the acquisition or construction of assets that necessarily take a substantial period to prepare for their intended use or sale.

Amortization

Property, plant and equipment are amortized to expense their cost less any residual value on a basis that reflects the pattern in which their future economic benefits are expected to be consumed. Therefore, the straight-line basis is applied over the following estimated useful lives:

Furnishings and equipment	3 to 5 years
Computer hardware	3 to 5 years
Network assets	8 to 10 years

Construction-in-progress is depreciated from the date the asset is ready for productive use.

The useful lives are reviewed annually and are adjusted if current estimated useful lives are different from previous estimates. The changes in accounting estimates are recognized prospectively.

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements
December 31, 2010

Intangible assets - indefinite life

In 2008, the Company participated in the advanced wireless services spectrum auction in Canada, which concluded on July 21, 2009 and acquired 10 MHz of spectrum in regions that include southern and eastern Ontario, Victoria, Vancouver, Edmonton, Calgary and Red Deer.

The payments made to Industry Canada for the spectrum totalled $243,159,000. In addition, $3,747,903 of incremental costs associated with the acquisition of the spectrum licences were capitalized; resulting in a total cost of $246,906,903. In February 2009, Industry Canada approved the required documentation pertaining to Canadian ownership and other matters. The total cost of the spectrum licences granted has been categorized as an intangible asset with indefinite life.

Intangible assets - definite life

Acquired computer software is capitalized on the basis of the costs incurred to acquire and bring to use the specific software. These costs are amortized over their estimated useful lives of three to five years.

Leases

Leases, in which a significant portion of the risk and rewards of ownership are retained by the lessor, are classified as operating leases. Operating leases are not recognized in the consolidated balance sheet and payments made under the operating leases (net of any incentives received from the lessor) are expensed.

Trade payables

Trade payables are obligations to pay for goods or services that have been acquired in the ordinary course of business from suppliers. Accounts payable are classified as current liabilities if payment is due within one year or less. If not, they are presented as non-current liabilities. Trade payables are recognized initially at fair value and subsequently measured at amortized cost using the effective interest method.

Borrowings

Borrowings are recognized initially at fair value, net of transaction costs incurred. Borrowings are subsequently carried at amortized cost. Any difference between the proceeds (net of transaction costs) and the redemption value is recognized in the income statement over the period of the borrowings using the effective interest method.

Fees paid on the establishment of loan facilities are recognized as transaction costs of the loan to the extent that it is probable that some or all of the facility will be drawn down. In this case, the fee is deferred until the drawdown occurs. To the extent there is no evidence that it is probable that some or all of the facility will be drawn down, the fee is capitalized as a prepayment for liquidity services and amortized over the period of the facility to which it relates.

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements
December 31, 2010

Compound financial instruments

Compound financial instruments issued by the group comprise convertible notes that can be converted to share capital at the option of the holder, and the number of shares to be issued does not vary with changes in their fair value.

The liability component of a compound financial instrument is recognized initially at the fair value of a similar liability that does not have an equity conversion option. The equity component is recognized initially at the difference between the fair value of the compound financial instrument as a whole and the fair value of the liability component. Any directly attributable transaction costs are allocated to the liability and equity components in proportion to their initial carrying amounts.

Subsequent to initial recognition, the liability component of a compound financial instrument is measured at amortized cost using the effective interest method. The equity component of a compound financial instrument is not re-measured subsequent to initial recognition, except on conversion or expiry.

Share capital

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of new shares or options are shown in equity as a deduction, net of taxes, from the proceeds.

Share-based payments

The share option plan allows Company employees to acquire shares of the Company. The fair value of options granted is recognized as share-based compensation with a credit to equity.

The fair value of the options granted is measured using the Black-Scholes option pricing model, taking into account the terms and conditions on which the options were granted. Non-market vesting conditions are included in assumptions about the number of options that are expected to vest. The total expense is recognized over the vesting period, which is the period over which all of the specified vesting conditions are to be satisfied. At the end of each reporting period, the entity revises its estimates of the number of options that are expected to vest based on the non-market vesting conditions.

Revenue

Revenue is recognised to the extent the Company has delivered goods or rendered services under an agreement, the amount of revenue can be measured reliably and it is probable that the economic benefits associated with the transaction will flow to the Company. Revenue is measured at the fair value of the consideration received, exclusive of sales taxes and discounts.

The company principally obtains revenue from providing the following telecommunication services; airtime usage, messaging, roaming fees, data services and other value added services. Products and services may be sold separately or in bundled packages.

The Company's wireless services are provided on a month-to-month basis and are paid in advance. Revenues from wireless services are recognized as services are rendered. Amounts received in advance are recorded as deferred revenue.

Equipment revenues arise from the sale of handsets and accessories. Revenues and related costs from the sale of handsets in the Company's retail locations are recognized at the time of sale. Revenues and related costs from the sale of accessories are recognized at the time of sale.

Current and deferred income taxes

The income tax expense for the period comprises current and deferred income taxes. Income taxes are recognized in the income statement, except to the extent that they relate to items recognized in other comprehensive income or directly in equity. In this case, these taxes are also recognized in other comprehensive income or directly in equity, respectively.

The current income tax charge is calculated on the basis of the tax laws enacted or substantively enacted at the consolidated balance sheet date in the countries where the Company's subsidiary operates and generates taxable income. Management periodically evaluates positions taken in tax returns with respect to situations in which applicable tax regulation is subject to interpretation. It establishes provisions where appropriate on the basis of amounts expected to be paid to the tax authorities.

Deferred income taxes are recognized, using the liability method, on temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the consolidated financial statements. However, the deferred income taxes are not accounted for if they arise from initial recognition of an asset or liability in a transaction other than a business combination that, at the time of the transaction, affects neither accounting nor taxable profit nor loss. Deferred income taxes are determined using tax rates and laws that have been enacted or substantially enacted by the consolidated balance sheet date and are expected to apply when the related deferred income tax asset is realized or the deferred income tax liability is settled.

Deferred income tax assets are recognized only to the extent that it is probable that future taxable profit will be available against which the temporary differences can be utilized.

Deferred income taxes are provided on temporary differences arising on investments in the subsidiary, except where the timing of the reversal of the temporary difference is controlled by the Company and it is probable that the temporary difference will not reverse in the foreseeable future.

Deferred income tax assets and liabilities are offset when there is a legally enforceable right to offset current tax assets against current tax liabilities and when the deferred income taxes assets and liabilities relate to income taxes levied by the same taxation authority on either the taxable entity or different taxable entities where there is an intention to settle the balances on a net basis.

Investment tax credits

The Company is entitled to Canadian federal and provincial investment tax credits, which are earned as a percentage of eligible research and development expenditures in each taxation year. Investment tax credits are accounted for as a reduction of the related expenditure, provided that the Company has assurance that the investment tax credits will be realized.

Recently issued accounting standards to be applied in future reporting periods

The accounting standards and interpretations that have not been early adopted for the year ended December 31, 2010, but will be applicable to the Company in future reporting periods, are detailed below. Apart from these standards and interpretations, we have considered other accounting standards that will be applicable in future periods, however they have been considered insignificant to the Company.

IFRS 9, Financial Instruments - Classification and Measurement

This is the first part of a new standard on classification and measurement of financial assets that will replace IAS 39, Financial Instruments – Recognition and Measurement. IFRS 9 has two measurement categories: amortized cost and fair value. All equity instruments are measured at fair value. A debt instrument is at amortized cost only if the entity is holding it to collect contractual cash flows and cash flows represent principal and interest. Otherwise, it is at fair value through profit and loss. This standard is effective for years beginning on or after January 1, 2013. The Company is currently assessing the impact of this standard.

IAS 24, Related Party Transactions (effective for years beginning on/after January 1, 2011)

Amended to clarify and simplify the definition of a related party. This new standard is effective for years beginning on or after January 1, 2011 and is anticipated to have no impact to the Company.

3 Capital and financial risk management

Capital management

The Company's objectives in managing capital are to safeguard the Company's ability to continue as a going concern while maintaining sufficient liquidity to support the Company's goal of building its network infrastructure. In general, the overall capital of the Company is evaluated and determined in the context of its financial objectives and its strategic plan.

The Company defines capital that it manages as the aggregate of its shareholders' equity, which comprises issued capital, other reserves, accumulated other comprehensive income and retained loss.

The Company determines the appropriate level of long-term borrowings, convertible debentures and debentures in the context of its cash flow and overall business risks. The funds from long-term borrowings, convertible debentures and debentures were primarily used to finance the construction of the Company's network infrastructure.

The current level of capital is considered adequate in the context of current operations. In light of the changes in economic conditions and credit markets, the Company reviews and updates its short-term and long-term strategic plans periodically to manage the capital structure and makes adjustments to it.

Financial risk management

The Company is exposed to liquidity risk, interest rate risk and credit risk.

Liquidity risk

Liquidity risk is the risk that the Company will not be able to meet its financial obligations as they come due. To manage the needs of the business, the capital structure of the Company includes a long-term credit facility of $124,888,506 (of which $69,297,976 has been drawn), access to $95,000,000 in the form of convertible debenture commitments (of which $40,939,182 has been advanced) and gross proceeds from the issuance of debentures totalling $75,000,000.

The Company manages its liquidity risk through regular monitoring of forecast and actual cash flows and management of its capital structure, as outlined above (capital management).

The Company's long-term credit facility is repayable starting on April 15, 2012, its convertible debenture matures on September 25, 2018 and its debentures are repayable on September 25, 2018. In the current economic and credit environment, it would be difficult for the Company to access this amount of borrowings if they were to mature today or in the immediate future.

In the event of a performance failure or default, the loans may be recalled or the Company may be restricted in its actions. Should the Company not be able to access adequate credit on maturity to enable the investment required by the business, this situation could result in limitations to growth and earnings.

Interest rate risk

The Company's interest rate risk is low due to the fixed rate nature of the long-term credit facility, convertible debentures and debentures.

Credit risk

The Company's financial instruments that are exposed to credit risk consist primarily of cash and cash equivalents and money market investments. Cash and cash equivalents and money market investments are maintained at major Canadian financial institutions that have high credit ratings assigned by international credit rating agencies. As a result, the exposure to credit risk is minimal.

4 Critical accounting estimates and judgments

Estimates and judgements are continually evaluated and are based on historical experience and other factors, including expectations of future events that are believed to be reasonable under the circumstances.

The Company makes estimates and assumptions concerning the future. The resulting accounting estimates will, by definition, seldom equal the related actual results. The estimates and assumptions that have a significant risk of causing a material adjustment to the carrying amounts of assets and liabilities within the next financial year are addressed below.

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements
December 31, 2010

The discussion below should also be read in conjunction with the Company's disclosure of significant accounting policies, which is provided in note 2 to the consolidated financial statements.

Intangible assets - indefinite life

The Company acquired ten 10 MHz of spectrum in regions that include southern and eastern Ontario, Victoria, Vancouver, Edmonton, Calgary and Red Deer. In February 2009, Industry Canada approved the required documentation pertaining to Canadian ownership and other matters related to acquired spectrum licences. The acquired spectrum licences, with a presumption of renewal at negligible cost, are estimated to have indefinite economic lives. This reflects the Company's expectation of the period over which the Company will continue to receive economic benefit from these spectrum licences. The economic lives are periodically reviewed, taking into consideration such factors as changes in technology and government legislation.

Impairment testing - DAVE Entity CGU

On an annual basis, the Company tests whether the DAVE Entity CGU (indefinite life intangible asset) has suffered any impairment, in accordance with the accounting policy stated in note 2. The recoverable amount of the DAVE Entity CGU has been determined based on value in use calculations. These calculations require the use of estimates.

The Company's impairment testing compares the carrying value of the DAVE Entity CGU with its recoverable amount as determined using a value in use calculation. The Company's assumptions for determining the recoverable amount of the DAVE Entity CGU is based on past experience and our expectations for the future. The Company's cash flow projections are based on a five year management approved forecast. The forecast uses management estimates to determine income, expenses, capital expenditure and cash flows for the DAVE Entity CGU.

The Company applied a discount rate of 17% and terminal value growth rate of 2% for the cash flow projection used in the impairment test. The discount rate reflects the market determined, risk adjusted discount rate which is adjusted for the specific risks relating to the DAVE Entity CGU. The terminal value growth rate represents the growth rate applied to extrapolate our cash flows beyond the five year forecast period. This growth rate is based on management's expectation of the DAVE Entity CGU's long term market performance.

The Company's impairment testing of the DAVE Entity CGU as at December 31, 2010 indentified no impairment.

Property, plant and equipment - useful life

Property, plant and equipment also represent a significant proportion of the asset base of the Company. As a result, the estimates and assumptions made to determine their useful lives and related amortization are critical to the Company's financial position and performance.

The charge in respect of periodic amortization is derived after determining an estimate of an asset's expected useful life and the expected residual value at the end of its life. Increasing an asset's expected life or its residual value would result in a reduced amortization charge in the consolidated statement of comprehensive income.

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements
December 31, 2010

The useful lives and residual values of the Company's assets are determined by management at the time the asset is acquired and reviewed annually for appropriateness. The useful lives are based on historical experience with similar assets as well as anticipation of future events, which may impact their lives, such as changes in technology.

5 Prepaid expenses

	2010 $	2009 $
Rent	2,126,287	616,603
Security deposit	389,960	-
Other prepaid expenses	379,613	138,323
	2,895,860	754,926

6 Trade receivables and other receivables

	2010 $	2009 $
Trade receivables	7,685,235	-
Interest	-	16,205
Other receivable	8,428,615	828,549
	16,113,850	844,754

The Company's trade receivables are stated after allowances for bad and doubtful debts based on management's assessment of creditworthiness. Based on the assessment no allowance was made in the current year.

7 Inventory

	2010 $	2009 $
Goods held for resale	687,967	-

Inventory is reported net of allowances for obsolescence, an analysis of which is as follows:

	2010 $	2009 $
Balance - Beginning of year	-	-
Amounts charged to the income statement	288,869	-
Balance - End of year	288,869	-

Cost of sales includes amounts related to inventory amounting to $2,223,568 (2009 - $nil).

8 Property, plant and equipment

	Construction-in-progress $	Network assets $	Furnishing and equipment $	Computer hardware $	Total $
Balance - January 1, 2009	225,000	-	-	-	225,000
Additions	21,024,170	-	131,728	2,235	21,158,133
Amortization	-	-	(5,575)	(62)	(5,637)
Balance - December 31, 2009	21,249,170	-	126,153	2,173	21,377,496
Additions	66,252,633	86,151,167	1,919,518	524,620	154,847,938
Movements	(86,151,167)	-	-	-	(86,151,167)
Amortization	-	(5,303,146)	(200,854)	(115,434)	(5,619,434)
Balance - December 31, 2010	1,350,636	80,848,021	1,844,817	411,359	84,454,833

The balance in construction-in-progress primarily comprises capitalized costs related to the Company's network infrastructure.

The Company has capitalized interest of $327,810 for qualifying assets during 2010 (2009 - $324,583). The capitalized interest at an average borrowing rate of 6.46% (2009 - 11.55%) is included in the network assets.

9 Intangible assets

	Spectrum licences - indefinite life $	Computer software - definite life $	Total $
Balance - January 1, 2009	246,867,152	-	246,867,152
Additions	39,751	11,035	50,786
Amortization	-	(425)	(425)
Balance - December 31, 2009	246,906,903	10,610	246,917,513
Additions	-	707,855	707,855
Amortization	-	(122,434)	(122,434)
Balance - December 31, 2010	246,906,903	596,031	247,502,934

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements
December 31, 2010

10 Trade and other payables

	2010 $	2009 $
Trade payables and accrued expenses	30,753,757	10,262,765
Amounts due to related parties (note 19)	162,527	194,545
	30,916,284	10,457,310

11 Borrowings

	2010 $	2009 $
Non-current		
Credit facility	65,738,426	8,324,003
Convertible debentures	33,263,522	26,865,587
Debentures	73,510,702	60,167,195
	172,512,650	95,356,785

Credit facility

On October 19, 2009, the Company entered into a credit agreement for an aggregate principal amount of up to $124,888,506 that consisted of facilities used solely to make direct payments to a specified company for purchases of network equipment and services.

During 2009, Company incurred $3,513,564 of transaction costs related to the credit agreement that were netted against the $11,837,567 drawn.

During 2010, the Company incurred an additional $621,733 of transaction costs related to the credit agreement that were netted against the $57,460,409 drawn.

The Company pays a fixed interest rate of 4.69% per annum and an additional 1.77% EKN (Swedish Export Credits Guarantee Board) premium per annum on the amount drawn.

The Company is required to start repaying the amounts drawn starting on April 15, 2012.

Convertible debentures

On May 22, 2009 and again on September 25, 2009, the Company issued convertible debentures for total proceeds of $38,939,182. 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.

The convertible debentures have characteristics of both debt and equity and, as such, an amount of $26,000,000 was classified as debt and $12,939,182 was recorded as equity.

During 2010, the Company incurred $6,535,654 as interest and related costs and of which $4,666,228 was capitalized as part of the principal debt.

Debentures

On December 17, 2009, the Company issued an unsecured subordinated debenture (debenture) of $75,000,000 that bears an interest rate of 15% per annum.

The proceeds from the facility were allocated to debentures and warrants based on the relative fair value of the debentures and warrants. The fair value of the debenture was determined by discounting the future contractual cash flows of the facility. The fair value of the warrants was determined using the Black-Scholes option pricing model. Based on the relative fair values of the debentures and warrants, proceeds of $63,000,000 were allocated to debentures and $12,000,000 was allocated to warrants.

The debenture includes 1,500,000 warrants that entitle the holder of each warrant to purchase one ordinary share at a price of $12.00 per ordinary share any time prior to September 25, 2018. The debenture also includes additional warrants that are contingent on the Company meeting certain milestones.

The Company incurred $3,960,928 of transaction costs related to the issuance of the debentures. $3,327,179 of the transaction costs was allocated to debentures (netted against debentures) and $633,749 was allocated to warrants (netted against warrants).

Interest is accrued semi-annually (June 30 and December 31 each year). During 2010, the Company incurred $13,347,538 of interest and related costs and of which $12,135,982 was capitalized as part of the principal debt.

The Company is required to repay the full principal amount of the debenture along with any accrued interest payable on September 25, 2018.

Finance costs

	2010 $	2009 $
Credit facility	2,215,218	350,024
Convertible debentures	6,535,654	926,808
Debenture	13,347,538	320,549
	22,098,410	1,597,381

12 Share capital and other reserves

	Number of shares	Ordinary shares $	Other reserves $	Total $
Balance - January 1, 2009	25,000,001	250,000,010	7,730,000	257,730,010
Issuance of ordinary shares (a)	200,000	-	2,000,000	2,000,000
Convertible debentures - equity component	-	-	12,766,539	12,766,539
Debentures - equity component	-	-	11,369,020	11,369,020
Share-based payments	-	-	680,000	680,000
Balance - December 31, 2009	25,200,001	250,000,010	34,545,559	284,545,569
Share-based payments	-	-	1,656,262	1,656,262
Balance - December 31, 2010	25,200,001	250,000,010	36,201,821	286,201,831

a) The Company issued 200,000 Class B (non-voting) shares as at December 31, 2009.

The total authorized number of ordinary shares (common shares and Class B shares) is unlimited (2009 - unlimited).

There are 4,995,211 (2009 - 4,995,211) common shares and 20,204,790 (2009 - 20,204,790) Class B shares issued and outstanding as at December 31, 2010.

13 Retained losses

	2010 $	2009 $
Balance - Beginning of year	(25,174,016)	(9,359,595)
Loss for the year	(96,029,190)	(15,814,421)
Balance - End of year	(121,203,206)	(25,174,016)

14 Commitments

Operating lease 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 which are individually significant to the Company.

The future aggregate minimum lease payments listed in the table below do not include any common costs, such as property taxes and utilities, which cannot be determined in advance.

	$
Within 1 year	5,282,548
Within 2 to 5 years	16,748,687
After 5 years	1,919,201
	23,950,436

Service and enterprise support provider commitments

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 cash payments due under the agreements are as follows:

	$
Within 1 year	10,000,782
Within 2 to 5 years	66,861,553
After 5 years	2,381,096
	79,243,431

Capital commitments

Capital expenditures contracted for at the end of the reporting period but not yet incurred are as follows:

	2010 $	2009 $
Property, plant and equipment	21,457,970	114,159,637

15 Contingencies

From time to time, the Company may be a defendant in lawsuits or party to other claims or potential claims that arise in the normal course of its business. The Company recognizes a provision for estimated loss contingencies when it is probable that a liability will be incurred and the amount of loss can be reasonably estimated.

In the opinion of the Company, there were no financial impacts such as lawsuits, claims or potential claims that would be material to the consolidated financial statements of the Company.

16 Expenses by nature

	2010 $	2009 $
Advertising and 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
	68,189,858	14,236,647

Operating expenses for the period include $307,203 (2009 - $506,478) of capital taxes.

17 Share-based payments

Share options are granted to directors and selected employees. The exercise price of the granted options ranges from $10 to $12 per share. The options generally start to vest over a five-year period starting on the first anniversary date (generally one year after the initial grant date).

Movements in the number of share options outstanding and their related weighted average exercise prices are as follows:

	2010		2009	
	Average exercise price per share $	Options	Average exercise price per share $	Options
Balance - Beginning of period	10.00	819,182	10.00	638,357
Granted	12.00	206,179	10.00	264,150
Forfeited	12.00	(10,000)	10.00	(83,325)
Exercised	-	-	-	-
Expired	-	-	-	-
Balance - End of period	10.39	1,015,361	10.00	819,182

None of the outstanding options were exercised in 2010 and 2009.

Share options outstanding at the end of the period have the following expiry year and exercise prices:

Expiry year	Exercise price per share $	Number of share options 2010	2009
2019	10.00	-	264,150
2020	12.00	196,179	-

The weighted average fair value of options granted during the period, determined using the Black-Scholes valuation model was $5.95 (2009 - $5.44) per option. The significant inputs into the model were weighted average share price of $12 (2009 - $10) at the grant date, exercise price shown above, volatility of 40% (2009 - 50%), dividend yield of nil% (2009 - nil%), an expected option life of eight (2009 - seven) years and an annual risk-free interest rate of 3% (2009 - 3%). See note 16 for the total expense recognized in the consolidated statement of comprehensive income for share options granted to directors and employees.

18 Income taxes

As at December 31, 2010, the Company has approximately $153,160,000 of available non-capital losses for income tax purposes that may be used to reduce taxable income in future years (2009 - $16,600,000). The benefit of these income tax losses, which expire in 2029 through 2030, have not been recognized in these consolidated financial statements.

The Company has net deductible temporary differences as at December 31, 2010 of approximately $112,800,000 related primarily to loss carry-forwards and other temporary differences. The Company has not recognized its net deferred income tax assets because the more likely than not criteria for recognition has not been met.

19 Related party transactions

a) 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

	2010 **$**	**2009** **$**
Balance owing to entities controlled by the Chairman of the Company	102,527	134,545

b) The Company entered into transactions with the following entities controlled by a significant shareholder of the Company:

- Quadrangle Capital Partners (Quadrangle)
- QCP CW S.A.R.L. (QCP)

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 QCP convertible debentures totalling $nil (note 11) during 2010 (2009 - $38,939,182). QCP was issued 200,000 Class B shares (non-voting) of the Company during 2009 (note 12).

Data and Audio-Visual Enterprises Holdings Inc.

Notes to Consolidated Financial Statements

December 31, 2010

c) Key management compensation

Key management includes staff 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

C

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

David Moon

A Commissioner, etc.

Tansaction Value Allocation Table
As at March 31, 2014
($Millions)

		Theoretical Transaction Values					
		$ 284.0	$ 300.0	$ 340.0	$ 380.0	$ 708.0	
<u>Opco creditors</u>							
First Lien Notes							
Principal	$ 195.0						
Expenses	$ 3.0						
Accrued Interest	$ 19.5						
Make Whole	$ 66.5						
	$ 284.0						
		$0.0	$16.0	$56.0	$96.0	$424.0	Excess after paymet of First Lien Notes
DIP Notes							
Principal	$ 30.0						
Interest	$ 2.3						
Fee	$ 3.0						
	$ 35.3						
Second Lien Notes*							
Principal	$ 35.0						
Interest	$ 2.7						
Fee	$ 8.3						
	$ 46.0						
Total DIP and 2nd Lien	$ 81.3						
		-$81.3	-$65 3	-$25.3	$14.7	$342.7	Excess (Shortfall) after payment of Second Lien Notes
Opco Unsecured Creditors	$ 80.5						
		-$161.8	-$145.8	-$105.8	-$65.8	$262.2	Excess (Shortfall) after paymet of OPCO Unsecured Debt
<u>Holdco Unsecured Creditors</u>							
15% Unsecured Notes							
Principal	$ 95.0						
PIK Interest	$ 71 7						
12% Unsecured Convertible Debentures							
Principal	$ 59.9						
PIK Interest	$ 35.[illegible]						
	$ 262.2						
		-$424.0	-$408.0	-$388.0	-$328.0	$0.0	Excess (Shortfall) after payment of Holdco Unsecured Debt

*Second Lien Notes subject to challenge which, if successful, would increase allocation to DIP notes and subordinate claims at certain values.

D

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

[signature]

A Commissioner, etc.

Commercial List No. CV 13-10016-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

In the matter of a Note Purchase, Guarantee and Backstop Agreement dated February 6, 2013 made by Data & Audio-Visual Enterprises Wireless Inc., Equity Financial Trust Company, and certain purchasers of notes thereunder whose identity is unknown (referred to in the Title of Proceedings herein as "the Unknown Purchasers").

B E T W E E N:

THE CATALYST CAPITAL GROUP INC.

Applicant

-and-

DATA & AUDIO – VISUAL ENTERPRISES WIRELESS INC., DATA & AUDIO – VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO – VISUAL ENTERPRISES LEASING INC., EQUITY FINANCIAL TRUST COMPANY, AND THE UNKNOWN PURCHASERS

Respondents

APPLICATION UNDER section 248 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, as amended and Rule 14.05(3)(d) of the *Rules of Civil Procedure*.

AFFIDAVIT OF GABRIEL DE ALBA
(Sworn February 26, 2013)

I, GABRIEL DE ALBA, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

BACKGROUND

1. I am the Managing Director and Partner of the Applicant, The Catalyst Capital Group Inc. (hereinafter "**Catalyst**" or the "**Applicant**"), and as such I have personal knowledge of the matters to which I hereinafter depose, except for those matters which are based on information and belief, in which case I have identified the source of my information and the fact of my belief. I have extensive background and experience in relation to financings and transactions of the type

referred to herein, derived from my work history and training. Now shown to me and marked as **Exhibit "A"** is a brief summary of my work experience and educational background.

2. Now shown to me and marked as **Exhibit "B"** is an extract from Catalyst's website which contains a brief description of Catalyst's business and lists the investment funds managed by Catalyst. Through these funds, Catalyst holds senior notes issued by the Respondent, Data & Audio – Visual Enterprises Wireless Inc. ("**Mobilicity**"). Specifically Catalyst holds in excess of 25% of the $195,000,000 9.5% First Lien Senior Secured Notes (the "**First Lien Notes**") issued by Mobilicity in April 2011. These First Lien Notes are governed by an Indenture dated as of April 29, 2011 ("**First Lien Indenture**"). Now shown to me and marked as **Exhibits "C", "D", "E"** and **"F"** respectively are true copies of the First Lien Indenture, the form of the First Lien Notes, the Security Agreement entered into with respect to the First Lien Notes, and the Offering Memorandum provided to the prospective purchasers of the First Lien Notes.

3. For the reasons set out hereinafter, based upon the information and documentation provided to date, Catalyst believes that the New Financing and Amendments referred to hereinafter are oppressive and unfairly prejudicial to the rights, interests and expectations of the holders of the First Lien Notes (the "**Senior Note Holders**") and that certain contractual provisions contained in, inter alia, the security documents related to the First Lien Notes have been breached.

THE NEW FINANCING

4. On February 12, 2013, Mobilicity issued a Press Release (the "**Press Release**") announcing new financing in the amount of $75,000,000.00 (the "**New Financing**"). The sum

total of Mobilicity's public disclosure in this Press Release regarding the New Financing was as follows:

> *"Toronto, ON – February 12, 2013 – Data & Audio-Visual Enterprises Wireless Inc. ("Mobilicity") is pleased to announce that it has entered into a $75 million second lien financing.*
>
> *This new financing will be available to Mobilicity in two stages. The first stage consists of a $35 million facility provided by certain lenders (the "Lenders") and the second stage will consist of a $75 million follow-on facility that will be backstopped by the Lenders. The first stage will be available in three draws, with each draw becoming available upon satisfaction of certain conditions precedent. At this time, the first draw of $15 million has been completed.*
>
> *Certain existing debt holders of Mobilicity will have the right to subscribe as lenders under the follow-on facility. Proceeds of the follow-on facility will be used to repay the first $35 million facility in full and provide Mobilicity with additional capital for general corporate purposes."*

Now shown to me and marked as **Exhibit "G"** is a true copy of the Press Release.

CATALYST'S INITIAL INQUIRIES REGARDING THE NEW FINANCING

5. Following the issuance of the above Press Release, on February 12, 2013 Mobilicity's counsel, Evan Cobb, wrote to corporate counsel for Catalyst, Jon Levin of the Fasken Martineau law firm, enclosing a copy of the Press Release and advising that the New Financing had necessitated amendments to the First Lien Indenture ("**Amendments**"):

> *"Please find attached a press release issued by Mobilicity this afternoon describing the terms of a Second Lien financing arrangement entered into by Mobilicity.*
>
> *Certain terms of the Indenture governing the 9.5% First Lien Senior Secured Notes due April 29, 2018 (the "First Lien Indenture") were amended in contemplation of this financing. The amendments were made in accordance with Section 9.02 of the First Lien Indenture.*

> *A notice of the amendments, together with a copy of the Supplemental Indenture giving effect to those amendments, has been delivered to the registered holder of the First Lien Notes and to the Indenture Trustee under the First Lien Indenture and will be distributed to depository participants."*

6. Catalyst had not been invited to participate in the New Financing and had no knowledge of the Amendments referred to in the Press Release, which had apparently been enacted to enable the New Financing to proceed. Accordingly, on February 12, 2013 Mr. Levin wrote to counsel for Mobilicity requesting a copy of the Amendments. On February 13, 2013, Mr. Levin was provided with a copy of the Supplemental Indenture dated February 6, 2013 and the Notice of Amendment relating to the New Financing. Now shown to me and marked as **Exhibits "H" and "I"**, respectively, are true copies of the Supplemental Indenture and the Notice of Amendment.

7. The Notice of Amendment delivered by Mobilicity indicated that it was being delivered "pursuant to Section 9.02 of the Indenture". The Notice further stated that:

> *"A copy of the Supplemental Indenture is attached hereto as Schedule A.*
>
> *The Supplemental Indenture provides amendments necessary to permit the issuance of up to $43.25 million in principal amount of 15.5% Second Lien Notes by Wireless on or about February 6, 2013 (the "New Notes") to certain lenders. The New Notes will be available to Mobilicity in stages, with each draw being available upon the satisfaction of certain conditions precedent. At this time, an initial draw of $15 million has been completed."*

8. The operative provisions of Section 9.02 of the Indenture read as follows:

> *"After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders of Notes affected thereby <u>a notice briefly describing the amendment, supplement or waiver.</u>"* (underlining added)

9. After reviewing the Supplemental Indenture and the Notice of Amendment, it became apparent that in order to fully understand the New Financing, the impact of same upon Senior Note Holders, and the implications and validity of the Amendments, additional documentation relating to the New Financing was required. In particular, access to the documentation relating to and setting out the terms and details of the New Financing was necessary for those purposes.

10. As a result, on February 13, 2013 Mr. Levin wrote to Mobilicity making the following request:

> *"Could I also please have the New Note documentation since definitions and provisions in that document are referred to in your attachments sent in the email below?"*

11. Mr. Levin received the following response from Mr. Cobb:

> *"There are significant confidentiality issues surrounding disclosure of the New Note documentation and we cannot agree to that type of disclosure at this time.*
>
> *The notice sent earlier today was provided as a courtesy. In all other cases these notices were sent only to holders of record that the Company can verify."*

Now shown to me and marked as **Exhibit "J"** is a true copy of the exchange of emails referred to above.

12. Concurrent with the above requests, on February 13, 2013, Catalyst itself contacted the Indenture Trustee under the First Lien Indenture, Equity Financial Trust Company (the

"**Trustee**") to request the documentation necessary to understand the New Financing. More specifically, in an exchange of emails between Zach Michaud of Catalyst and Kathy Thorpe, Senior Trust Officer of the Trustee, Catalyst wrote as follows:

> "*We were informed late this evening that Data and Audio-Visual Enterprises Wireless Inc. has amended certain terms to the indenture governing its First Lien Senior Secured Notes due April 29, 2018 (the "First Lien Indenture"). Catalyst, a registered holder and holder of greater than 25% of outstanding First Lien Senior Secured Notes, requests a copy of all documentation provided to the trustee related either directly or indirectly to any amendment, waiver requested or any other change to the First Lien Indenture. We request these documents be sent first thing tomorrow morning.*
>
> * * *
>
> *Can you please send us the documents related to the New Notes (as defined in the Supplemental Indenture) asap, <u>it is not possible to understand the amendment without these documents</u>. If you are not the Trustee for the New Notes could you please advise us who they are and contact information for them. In any event, <u>we would expect you to have copies of the documents referred to or related to the Supplemental Indenture in order to properly interpret the document, including, but not limited to: the Note Purchase Agreement, Note Backstop Agreement and the Note Guarantee Agreement</u>.*" (underlining added)

13. Ms. Thorpe responded on behalf of the Trustee as follows:

> "*Hello Zach, unfortunately I cannot send out the information directly to you as our records do not reflect you as a direct registered holder. We therefore cannot verify your holdings. However <u>the material however has been sent to CDS as well to the participants showing on the CDS registers</u>.*
>
> *I would recommend you back track to the broker holding the position on your behalf to obtain copies of the material.*"
> (underlining added)

14. In light of the above response, Catalyst contacted its custodian, CIBC Mellon. Catalyst was advised by CIBC Mellon that it did not have the documentation which had been requested by Catalyst. CIBC Mellon also advised Catalyst it had contacted the Trustee to confirm that Catalyst was indeed a holder of the First Lien Senior Notes. As a result, Catalyst wrote to the Trustee as follows:

> "*CIBC Mellon has informed me they have spoken to you to confirm Catalyst is a holder of the First Lien Senior Secured Notes due April 29, 2018. Can you please release the documents I have requested below asap.*" (underlining added)

15. Subsequently, Catalyst was advised by the Trustee that the requested documents had been released to CIBC Mellon:

> "*The documents were released to CIBC Mellon earlier to the attention of Nadine. I have copied Nadine Hillier @ Mellon on this email.*" (underlining added)

16. Catalyst wrote again to the Trustee seeking to confirm that all of the documents requested, including those reasonably necessary to understand the terms and impact of the New Financing upon Senior Note Holders, had been provided to CIBC Mellon:

> "*Were copies of the documents referred to or related to the Supplemental Indenture in order to properly interpret the document included in the package released to CIBC Mellon? This would include, but not be limited to: the Note Purchase Agreement, Note Backstop Agreement and the Note Guarantee Agreement.*"
> (underlining added)

17. In response, the Trustee advised Catalyst that it had not provided all of the requested documentation to CIBC Mellon due to "confidentiality restrictions":

> "*Zach the NPA document referred to in your email below were not included in the package delivered to participants and the Company is not able to provide that document to the participants at this time as it is subject to confidentiality restrictions.*" (underlining added)

Now shown to me and marked as **Exhibit "K"** is a true copy of the exchange of emails referred to above.

FURTHER REQUESTS BY CATALYST

18. As noted above, the contents of the Supplemental Indenture that accompanied the Notice of Amendment made it clear that additional documentation was required to enable Senior Note Holders to understand the terms and impact of the New Financing upon the First Lien Notes, as well as to consider, among other things, the implications of the Amendments and whether the Amendments had been validly enacted.

19. In this regard, I refer, for example, to the frequent references in the Supplemental Indenture to the Note Purchase, Guarantee and Backstop Agreement ("NPA"), including Sections 2 (a) (i), (iii), (iv), (vii), (x) and (xi) of the Supplemental Indenture.

20. As stated further below, Catalyst had a legitimate expectation that it would receive a description of any amendments to the Indenture in a manner which is sufficient to enable Catalyst to understand the New Financing, to assess whether the rights of the Senior Note Holders have been adversely affected, and to consider the effects and propriety of the Amendments which had been enacted to allow the New Financing to proceed.

21. Catalyst considered the explanations which had been provided by Mobilicity and the Trustee for their refusal to provide Catalyst with the information which had requested, namely an

unspecified reference to "significant confidentiality issues" and an assertion that "the Company is not able to provide [the NPA] . . . at this time as it is subject to confidentiality restrictions".

22. Without accepting the assertions that confidentiality issues or restrictions existed which negated the right of any Senior Note Holder to have access to the terms of the NPA, Catalyst concluded that if there were any provisions of the NPA which truly engaged any <u>legitimate</u> confidentiality concerns, same could be appropriately dealt with in a manner that provided effective disclosure.

23. As a result on Friday, February 15, 2013 a letter was sent to the Trustee and copied to counsel for Mobilicity by David Moore, counsel to Catalyst, detailing the foregoing facts and events. This letter requested a redacted copy of the NPA in a form which preserved the confidentiality of the persons ("**Purchasers**") who had purchased notes ("**New Notes**") under the New Financing, but which allowed Catalyst to understand and assess the New Financing and Amendments. This letter requested that the response to Catalyst's request be provided on an urgent basis.

24. No immediate response was received and as a result on Sunday February 17, 2013 a further letter was sent to the Trustee and again copied to counsel for Mobilicity requesting a response to Catalyst's requests by no later than noon on Tuesday, February 19, 2013. True copies of the aforementioned letters to the Trustee and Mobilicity are now shown to me and marked as **Exhibits "L" and "M"**, respectively.

25. On February 19, 2013 at 12:11 PM the Trustee responded stating that all inquiries should be directed to counsel for Mobilicity. Now shown to me and marked as **Exhibit "N"** is a true copy of this letter.

26. As a result Mr. Moore wrote again to counsel for Mobilicity reiterating the need for a response to his letters of February 15 and 17, 2013. Given the fact that a week had elapsed since the announcement of the New Financing, Catalyst requested the documentation be provided by 5:00 p.m. on Tuesday, February 19, 2013. Now show to me and marked as **Exhibit "O"** is a true copy of this letter.

27. At 4:52 p.m. on February 19, 2013 counsel for Mobilicity responded as follows:

> *"We have spoken to Rob Chadwick at Goodmans LLP, counsel to the Purchasers under the Note Purchase, Guarantee and Backstop Agreement, and have been advised that he is seeking instructions regarding the scope of the redactions that will be required by his clients in order to permit disclosure of the Agreement in light of the confidentiality obligations that bind the Company. Please feel free to reach out to him directly regarding timing.*
>
> *In the meantime, we will advise you as soon as we receive a response from Mr. Chadwick.*
>
> *We are seeking instructions on whether we can accept service on behalf of the Company. We do not represent the Trustee and cannot accept service on their behalf."*

Now show to me and marked as **Exhibit "P"** is a true copy of this email.

28. Now shown to me and marked as **Exhibit "Q"** is a true copy of a further email from Mr. Cobb dated February 20, 2013. This email confirmed that counsel for the Purchasers of the New Notes was deciding upon the redactions to be applied to the NPA. Later on February 20, 2013,

Mr. Cobb sent a further email attaching a redacted and incomplete version of the NPA. Now shown to me and marked as **Exhibit "R"** is a true copy of this email and the redacted NPA.

29. Catalyst immediately undertook a review of this material. It quickly became apparent that the redactions to the NPA extended far beyond deletions needed to shield identity of the Purchasers of the New Notes and their holdings. Instead, the redactions had been applied to 35 separate substantive terms of the NPA. These hidden terms related to essential aspects of the New Financing, including definitions applicable thereto, the list of contractual documents which formed part of the New Financing, preconditions for any funding in addition to the initial $15,000,000 advanced, numerous representations of Mobilicity, several covenants, the intended use of the funds advanced, and at least one event of default stipulated in the NPA.

30. It was also evident that there were several schedules which formed part of the NPA which had not been provided. Specifically, it appears that there are at least 9 Schedules (A-I) to the NPA, but only one, Schedule D (Definitions), had been included in the material sent by Mr. Cobb. While it is difficult to identify the subject matter of all of the missing schedules, one of them - Schedule F - apparently summarizes the essential terms of an application for a Plan of Arrangement under the *Canada Business Corporations Act* (**"CBCA"**) which the Purchasers have approved. This application is required as a precondition for any further funding beyond the $15,000,000 advanced on February 6, 2013 and was not previously disclosed in the Press Release or otherwise. In my experience such disclosure is typical because a condition involving the obtaining of a court ordered plan of arrangement in the case of a company in circumstances similar to those of Mobilicity is normally considered to be highly material. In addition to these

omissions, the material did not fully disclose or set out the terms of the "Follow-on Facility" referred to in the Press Release.

31. In summary, it was clear that the material provided to Catalyst was not in accordance with the requests which Catalyst had made for documentation to allow it to conduct a meaningful review of the terms of the NPA or to enable Catalyst to assess the Amendments on an informed basis.

32. As a result, on February 21, 2013, a further letter was sent on Catalyst's behalf regarding the immediate need for production of an NPA without the extensive redactions which the Purchasers had applied and for the delivery of the missing Schedules. Now shown to me and marked as **Exhibit "S"** hereto is a true copy of this letter, as well as the chart referred to therein which detailed, to the extent possible, the location and nature of the 35 redactions.

33. Mr. Cobb responded by email on February 21, 2013 at 6:43 pm. Now shown to me and marked as **Exhibit "T"** is a true copy of this communication, by which Mr. Cobb forwarded a further version of the NPA with fewer redactions. Contrary to what had been requested, this material did not include any of the previously omitted schedules to the NPA. This revised iteration of the NPA did contain only 3 redactions. However, as detailed below, in reality the substantive information sought by Catalyst to enable it to fully understand the New Financing, the Amendments, and the implications and impacts of same upon its rights and interests was not provided.

34. In this regard, now shown to me and marked as **Exhibit "U"** is a true copy of the most recent version of the NPA provided to Catalyst, which has been highlighted to identify the 33

redactions which have now been eliminated. The newly unredacted provisions show that the NPA refers to 3 additional documents – a "Cash Flow Forecast", a "Disclosure Letter", and an "Adequate Protection Letter" – whose existence had not been previously disclosed. These documents contain highly relevant but currently unknown information regarding the terms of the NPA, relevant to the impacts of the New Financing and the Amendments upon the Senior Note Holders:

(1) the "Cash Flow Forecast" is defined in paragraph 11.1(m) of the NPA as a weekly cash flow forecast for the period between February 6, 2013 and May 30, 2013. The information contained in this document is critical to understanding numerous important terms of the New Financing, including provisions in the NPA relating to the use of funds (paragraph 3.7), three preconditions to further funding (paragraphs 11.1(n), 11.2(b), 11.3(b), three of Mobilicity's representations (paragraphs 12(h), 12(p), 12(q)); seven of Mobilicity's covenants (paragraphs 13(f)(i), 13(f)(iv), 13(i), 13(j), 13(s), 13(t) and 13(n)) and one of the Events of Default (paragraph 14 (k));

(2) the reference to the "Disclosure Letter" and the definition of same is contained in Schedule D to the NPA. This specific reference and definition had previously been redacted. The unredacted Schedule D indicates that the Disclosure Letter is **"a letter from the Issuer and the Guarantors' to the Purchasers' counsel, Goodmans LLP dated the date hereof and attached as Schedule I hereto, all or any portion of which Goodmans LLP shall be entitled to share with one or more Purchasers"**;

(3) The Disclosure Letter is an integral part of the NPA and has a direct bearing upon the contents of and exceptions to ten separate representations by Mobilicity: paragraph 12(g) (existence of Material Adverse Effects and Material Events); paragraph 12(l) (quantum of bonuses to be paid to senior executives); paragraph 12(m) (exceptions to the conduct of business in the ordinary course), paragraphs 12(n) and (o) (KERP and other employment terms referable to senior officers and managers); paragraph 12(p) (terms of retainers with advisers and professionals); paragraph 12(r) (identification of pending or threatened litigation); paragraph 12(s) (identification of Material Contracts and defaults and disputes therein expected to give rise to Material Adverse Effects); paragraph 12(y) (accuracy of the information provided to the Purchasers); and paragraph 12(z) (existence of any other agreements regarding the refinancing and recapitalization of Mobilicity) of the NPA. Without access to the Disclosure Letter, it is impossible to understand the contents, nature and implications of these representations, their impact upon the New Financing, and their relationship to the Amendments and the effects of same upon the First Lien Notes, and

(4) The "Adequate Protection Letter" is defined in previously redacted paragraph 11.1(q) of the NPA. This definition and paragraph 21.2 of the NPA (also previously redacted) indicates that certain aspects of the New Financing (as yet not fully understood or revealed) contemplate DIP financing, possibly as a precondition to further funding under the New Financing.

35. None of the contents of the "Cash Flow Forecast", the "Disclosure Letter", or the "Adequate Protection Letter" has been disclosed to Catalyst. As a result, although the removal of 33 of the redactions noted above superficially suggests that more complete disclosure in accordance with Catalyst's prior requests has now been made, in fact very little additional substantive information has been provided. Catalyst remains in the dark about a large number of important terms of the New Financing, including the substance of the provisions regarding the use of funds, the terms and dynamics related to CCAA/CBCA filings, as well as numerous representations and covenants, all of which are necessary to properly understand and assess the New Financing and the Amendments.

CATALYST'S CONCERNS AND EXPECTATIONS

36. Based on the exchange of emails and correspondence described above, Catalyst concluded that its requests for the documents necessary to assess the impact of the New Financing on the rights and position of Senior Note Holders had not been and will not be fairly or expeditiously addressed by Mobilicity or the Trustee. Catalyst is extremely concerned by this state of affairs. For example, the recently obtained materials include a reference to DIP financing, which is often a feature of insolvency proceedings under the Companies' Creditors Arrangement Act. This reference to DIP financing, which was not previously disclosed in the Press Release or otherwise, has caused Catalyst to be particularly concerned about the adequacy of the disclosure provided to date.

37. This concern is highlighted by the fact that a disparity of information exists between Senior Note Holders. On the one hand Catalyst (and other Senior Note Holders who were not

aware of the Amendments to the Indenture prior to the Press Release), have been and continue to be denied access to information and documentation reasonably necessary to understand the New Financing, consider the Amendments and assess their legal and economic rights and interests. In contrast, other Senior Note Holders - i.e. the members of the group that purported to approve the Amendments to the Indenture - are privy to and have the advantage of knowing material information regarding the New Financing and the Amendments that has been denied to Catalyst and the other Senior Note Holders. In my experience, issuers routinely seek to ensure that all holders of like securities simultaneously have access to material facts and material changes affecting such issuers so that there is a level playing field and so as to avoid discrimination between such holders.

38. The material omissions in the information and documentation provided to date make it impossible for Catalyst to fully understand the New Financing, the Amendments, or to assess the impacts and adverse effects of same upon the legal and economic rights and interests of the Senior Note Holders.

39. However, beyond the disclosure issues referred to above, based upon the facts which have been ascertained to date, Catalyst also has very serious concerns about the New Financing and the impact of the Amendments.

40. Firstly, it is evident that the New Financing is subject to several financial terms and conditions which are extremely onerous to Mobilicity and unfair and unduly prejudicial to the economic interests of all of the stakeholders in Mobilicity, including the Senior Note Holders:

(1) The coupon on the New Financing Notes is 15.5%;

(2) The NPA provides for an upfront fee of $8,250,000 which is immediately payable upon the first tranche of funding, which is deemed to be "fully earned" and which would be retained by the Purchasers regardless of whether any further funding ever takes place;

(3) This $8,250,000 fee was paid on February 6, 2013 through the issuance and distribution of additional New Notes in that amount. In other words, in addition to the interest charges (and transaction costs) paid by Mobilicity, there was an immediate cost representing over 55% of the $15,000,000 funded advance. The New Notes fall due by no later than May 30, 2013. In my experience, no issuer or its board of directors would issue notes representing payment of a fee unless they fully anticipated that there would be sufficient resources to pay same in cash on the due date for the notes, namely May 30, 2013 as regards to New Notes as stated above. This suggests that the $8,250,000 fee was structured to be and is a real obligation that will be paid on or before May 30, 2013, presumably if necessary by resort to the collateral identified in the NPA.

(4) Beyond the initial $15,000,000 advance, all other advances are subject to numerous preconditions, including the initiation and completion of proceedings for a Plan of Arrangement under the CBCA, on terms which have already been negotiated with and agreed to by the Purchasers.

(5) The NPA also provides for a further "Liquidity Payment" of $7,000,000, payable in cash, upon the happenings of certain contingencies.

41. The above facts and terms were <u>not</u> disclosed in the Press Release, although in my experience such disclosure would have been usual and highly material.

42. Secondly, there are several aspects of the New Financing that are unusual and which, in my experience, do not reflect current commercial practices and/or terms which one would expect in financings of this type. These examples, based upon a preliminary review of the NPA, and some of the concerns arising from them are summarized in paragraphs 43 – 45 below.

43. While the NPA contains a subordination clause referring to the Senior Notes, there are several practical problems and omissions with respect to these provisions. In practical terms it is significant that the New Notes fall due no later than May 30, 2013, a date which is well in advance of the due date of the First Lien Notes. This means that enforcement proceedings may be triggered by Purchasers of the New Notes long before the maturity date of the Senior Notes and long before the Senior Note Holders might be entitled to or wish to take enforcement proceedings themselves. In the event of default of payment, the NPA allows the holders thereof to take possession of the collateral, without consent of and to the prejudice of the Senior Note Holders. This means that the Senior Note Holders may be required to act upon an Event of Default under the Indenture, and attempt to realize upon their collateral, at a time and in circumstances which are not of their choosing and which may be very much to their prejudice. In my experience, such a financing would normally be on the basis that any new "subordinate" debt obligations would fall due after the maturity date of the Senior Secured Debt. Furthermore, such a financing would normally also include provisions preventing subordinate security holders from realizing upon their security or taking possession of the collateral without the consent of the Senior Note Holders, provisions ensuring that, until the Senior Note Holders are paid in full, any proceeds of realization received by subordinate security holders would be held in trust for and paid over to the Senior Note Holders, and several other protections. Now shown to me and

marked as **Exhibit "V"** is a sheet of draft provisions which are often used to provide appropriate protections, and which go well beyond a single clause recognizing the ranking of the Senior Notes.

44. The New Financing does not have any "fiduciary out" provision. This is a normal feature which enables a debtor to consider other potentially advantageous financing proposals. Such provisions are standard in financings of this type, to enable the directors of the borrower to exercise their fiduciary responsibilities. On the basis of what has been disclosed to date, not only is there no "fiduciary out" provision in the NPA, but there are also express prohibitions which provide the holder of the New Notes a veto over any new financing, and which, in my view, make it highly unlikely that any proposals for same are likely to be made by third parties (paragraphs 13(p), (q), (r), 21.10 and 21.11, NPA).

45. In addition, the NPA contains numerous provisions that suggest or imply that Mobilicity is at or in a near - insolvency state, and that proceedings involving DIP (Debtor-in-Possession) Financing – to the direct economic prejudice of Senior Note Holders - may be mandated as conditions for the remainder of the advances under the New Financing. In particular:

(1) While the contents of the "Cash Flow Forecast" are unknown, the NPA requires weekly cash flow forecasts (paragraph 11.1(m)), and includes express conditions and covenants predicated upon defined variances from these forecasts (paragraphs 11.2(b) and 11.3(b)). The NPA also requires bi-weekly reports as to Mobilicity's actual cash flows together with a detailed variance analysis (paragraph 13(f)(i)), and contains restrictions upon capital expenditures (paragraph 13(j)) and upon payments of advisor

and professional fees (paragraphs 13(f) and (n)). The NPA also provides that specified variances (which cannot be identified in the information currently disclosed) constitute an Event of Default (paragraph 14(k));

(2) The Adequate Protection Letter referred to in the previously redacted provisions of the NPA (paragraph 11.1(q) and 21.3)) acknowledges that, following the New Financing, "there is not adequate protection for (*inter alia*) the Senior Notes . . . to permit any (further) financing" by Mobilicity. In other words, the New Financing stretches to the limit the Corporation's capacity to borrow;

(3) While the contents of the Adequate Protection Letter remain unknown to Catalyst, as noted above the references to it in the NPA appear to contemplate, at some future date, the need for Debtor-in-Possession Financing, in accordance with terms which Mobilicity has already agreed to with the Purchasers. In usual practice such funding would take priority over all existing debt obligations of Mobilicity. It is impossible to determine whether such Debtor-in-Possession Financing will be an element of the "Follow-on-Financing" referred to in the NPA, or whether same will be a required element of the CBCA filing referred to therein, because the terms and details of these aspects of the New Financing have not been disclosed to Catalyst. In my experience, it is highly unusual and contrary to the interests of the Senior Debt Holders for the terms of such prospective DIP financing to have been determined by and be subject to the agreement of so-called "subordinate" debt holders, without full disclosure to and involvement of senior ranking creditors, particularly where they may be adversely affected and whereas is the case

herein, a reasonable reading of the Indenture would give each holder of Senior Notes approval rights.

The above provisions and reporting requirements and controls are similar to terms that are often found in CCAA orders requiring reports to Court appointed monitors by insolvent filers which are normally available to all interested parties in such proceedings. Moreover, it is anomalous for "subordinate" holders to obtain more information than senior security holders.

46. It is impossible, without more documentation, to fully assess the implications and potential effects of the New Financing, or the implications and effects of the Amendments upon the Senior Note Holders. However, based upon what has been made available to date, it is clear to me that the economic interests and the legal interests of the Senior Note Holders have been and will be adversely affected by the New Financing and the Amendments which purportedly permitted it to proceed in a manner which is unfair and unduly prejudicial.

AMENDMENTS TO THE INDENTURE AND THE COLLATERAL DOCUMENTS

47. The foregoing matters raise serious questions as to the propriety of the Amendments. Without more information it is impossible to be definitive, but it appears probable that Articles 9.02 (12) and (15) of the Indenture have been violated. It further appears that all of the 50% plus Senior Note Holders who purported to approve the Amendments and who also participated in the New Financing and derived the benefits therefrom (which were not available to other Senior Note Holders), have breached the provisions of the Indenture which prohibit Senior Note Holders from acting under the Indenture in a manner which prejudices other Senior Note Holders.

48. I consider that the Amendments are materially adverse to the Senior Note Holders for a number of reasons. These reasons include the fact that, in light of the maturity date of the New Financing being earlier than that of the First Lien Notes, contrary to usual practice in my experience, the Purchasers will be permitted to enforce their security against the collateral of the Senior Note Holders in circumstances where the Senior Note Holders may not be able or may not wish to do so and in circumstances where, as a result, the Senior Note Holders may be exposed to material loss precipitated by the actions of the Purchasers notwithstanding their junior ranking. As well, notwithstanding that the Purchasers are junior secured creditors, there is no constraint imposed upon them that would preclude them from voting in a manner inconsistent with the best interests of the Senior Note Holders in any insolvency proceedings or as to their ability to take issue with any realization effected or proposed to be effected by the Senior Note Holders. This too is contrary to usual practice.

49. The Security Agreement was intended to protect the Senior Note Holders from these and other adverse consequences by the inclusion of the Negative Pledge contained in Section 4.1 (c) therein, and by the restrictions on the ability to amend this clause by reason of the provisions of Section 5.9, the definition of "Required Noteholders", and the resulting incorporation of the limitations set out in Section 9.02 of the Indenture, including section 9.02 (9) thereof.

50. The Amendments set out in the Supplemental Indenture, if effective, would result in a variation to the Permitted Liens previously allowed under section 4.1 (c) of the Security Agreement. This change specifically purports to authorize previously prohibited liens in the amount of $43,000,000, on terms which do not protect the Senior Note Holders and which are

inconsistent with normal commercial practice, and without the consent of all of the Senior Note Holders.

51. The prejudice to the Senior Note Holders caused by this Amendment to the Negative Pledge and the importance of the Senior Note Holders retaining control over the timing and methods used to realize upon the collateral held as security, which has now been lost, are especially significant given the unusual features of the Spectrum Licenses which comprise a significant proportion of the collateral, the difficulties and complexities inherent in any attempts to realize on that security, and the resulting risks, as set out in the Offering Memorandum issued by the Corporation in connection with the Senior Notes. Now shown to me and marked as **Exhibit "W"** are true copies of extracts from the said Offering Memorandum which outline these difficulties and risks. These extracts also outline the risks relating to any filing by the Corporation under the CCAA or similar insolvency legislation, an outcome which I believe is materially more likely by reason of the terms of the New Financing, to the extent same are currently known.

52. There are certain basic principles and standards of conduct, consistent with the terms of the Indenture and the First Lien Notes, that form part of Catalyst's expectations. Catalyst expected, and expects:

(1) that as and when any new financings permitted under the Indenture were entered into by Mobilicity, they would be on terms consistent with usual commercial terms and practices;

(2) in any subsequent financing, so-called <u>subordinate</u> security holders would not be placed in a position of *de facto*, economic/commercial control over the affairs of Mobilicity, whether as a result of the early maturity date of the debt instruments held by such persons, their rights of enforcement, their ability to dictate by agreement the terms of corporate restructuring and prospective DIP financings, or otherwise;

(3) that as and when any Amendments were made to the Indenture, Senior Note Holders would immediately be provided with sufficient information and documentation to understand and analyze the effects and implications of same, in relation to both their strict <u>legal</u> rights and their <u>economic</u> interests;

(4) that as and when any Amendments were made to the Indenture, the effects of same and any transactions they enabled would <u>not</u> adversely affect the economic or legal interests of the Senior Note Holders in any way;

(5) that neither Mobilicity nor the Trustee would tolerate a situation where some Senior Note Holders had informational advantages over other Senior Note Holders in relation to the New Financing, the Amendments to the Indenture, or otherwise in relation to the affairs of the Corporation, and

(6) that the Trustee would be not placed in any conflict or potential conflict of interest position in relation to the fulfillment of its duties and exercise of its powers under the Indenture. In this regard, while Section 7.03 of the Indenture permits the Trustee to enter to other business activities with the Corporation, conflicts are not permitted. I believe such conflicts do exist by reason of the New Financing. For example, the Trustee's

appointment as Collateral Agent in relation to the Secured Lien Notes and creates further duties and responsibilities which may well be adverse to the interests of Secured Lien Holders.

53. The history of Catalyst's unsuccessful efforts to obtain information about the New Financing and the Amendments, and the information available to date about the substantive terms of the New Financing, and my observations and conclusions as set out herein, make it clear that the procedures followed and the terms of the New Financing are not in accordance with and defeats the above expectations.

54. Lastly, it is appropriate to make reference to another aspect of the communications from counsel for the Corporation. In the emails forwarding the redacted versions of the NPA, the Corporation's counsel has attempted to impose a restriction upon the use of the NPA based upon a prior confidentiality agreement entered into between Catalyst and the Corporation. The context is that in December 2012 Catalyst tried to engage the Corporation in discussions about an overall refinancing. In furtherance of this, a Mutual Confidentiality Agreement was entered into, a copy of which is now shown to me and marked as **Exhibit "X"**.

55. In the course of the discussions that took place in late December, Catalyst (a) presented the Corporation with a comprehensive refinancing term sheet designed to be beneficial to all of the Corporation's Stakeholders and (b) advised the Corporation that it was not seeking any confidential information.

56. However, the discussions with the Corporation about this potential financing broke off at or about the first week of January 2013. Since that time, despite inquiries by or on behalf of

Catalyst to follow up, there have been no discussions with the Corporation about Catalyst's refinancing proposal.

57. The information and documents currently sought by Catalyst, and the versions of the NPA produced to date are not part of the discussions or documents to which the Mutual Confidentiality Agreement applies. Rather these matters relate to Catalyst's independent rights and expectations, including its right and expectation that information and documentation about the New Financing and the Amendments would be disclosed in a timely way, for the reasons described above. In these circumstances it appears that the Corporation is attempting to use the Mutual Confidentiality Agreement as a means to constrain Catalyst and to prolong the informational advantages enjoyed by the Purchasers of the New Notes over other Senior Note Holders (Catalyst included), who are in the dark about key elements of the New Financing and the Amendments.

58. As appears from the letter which is now shown to me and marked as **Exhibit "Y"** hereto, Catalyst does not believe that the Mutual Confidentiality Agreement applies to the recently obtained documentation. However, Catalyst does not want to unilaterally determine that issue by filing materials in the public record which detail the contents of NPA. As a result the Notice of Application herein has been drafted in a manner which does not refer to the NPA. Rather, the detailed grounds which Catalyst relies upon (which do refer to terms of the NPA) are referred to as "Schedule A" in the Notice of Application herein. This Schedule is now shown to me and marked as **Exhibit "Z"**.

CONCLUSION

59. This Affidavit is sworn in support of relief sought in the Notice of Application herein and for no improper purpose or motive. There is considerable urgency to the relief sought as Catalyst wishes to fully assess the New Financing and the Amendments and the issues related thereto immediately, and to seek appropriate substantive remedies from the Court as soon as possible.

SWORN before me at the City of Toronto, in the Province of Ontario this 26th day of February, 2013.	)))))	GABRIEL DE ALBA
A COMMISSIONER, ETC.		

E

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

Deed Moore

A Commissioner, etc.

Commercial List No. CV 13-10016-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

In the matter of a Note Purchase, Guarantee and Backstop Agreement dated February 6, 2013 made by Data & Audio-Visual Enterprises Wireless Inc., Equity Financial Trust Company, and certain purchasers of notes thereunder whose identity is unknown (referred to in the Title of Proceedings herein as "the Unknown Purchasers").

BETWEEN:

THE CATALYST CAPITAL GROUP INC.

Applicant

-and-

DATA & AUDIO – VISUAL ENTERPRISES WIRELESS INC., DATA & AUDIO – VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO – VISUAL ENTERPRISES LEASING INC., EQUITY FINANCIAL TRUST COMPANY, AND THE UNKNOWN PURCHASERS

Respondents

APPLICATION UNDER section 248 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, as amended and Rule 14.05(3)(d) of the *Rules of Civil Procedure*.

AFFIDAVIT OF GABRIEL DE ALBA
(Sworn May 9, 2013)

I, GABRIEL DE ALBA, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Managing Director and Partner of the Applicant, The Catalyst Capital Group Inc. (hereinafter "**Catalyst**" or the "**Applicant**").

2. This affidavit is sworn in response to the Affidavit of William Aziz dated April 24, 2013, with respect to the proposed plans of arrangement under the *Canada Business Corporation Act*, R.S., 1985 c. C-44 ("**CBCA**") referred to therein (the "**CBCA Affidavit**"), and the Affidavit of Mr. Aziz dated May 3, 2013, with respect to the oppression claims which are the subject of this proceeding (the "**Oppression Affidavit**").

3. In this proceeding, Catalyst has identified and relied upon several facts and circumstances regarding the financing disclosed by the respondent Data & Audio-Visual Enterprises Wireless Inc. ("**Mobilicity**") on February 12, 2013 (the "**February Financing**") which Catalyst asserts constitutes oppressive conduct, including:

(a) the lack of accurate and complete disclosure regarding the February Financing and the secrecy maintained by Mobilicity and the other respondents regarding the terms of the February Financing;

(b) the disparity of information among First Lien Noteholders resulting from the above;

(c) the extraordinary fee of $8.25 million (which was deemed to be fully earned) which was payable to the First Lien Noteholders who participated in the February Financing, upon the initial advance of $15 million pursuant to the February Financing without any obligation to provide any further financing;

(d) the lack of appropriate provisions with respect to the subordination of the Second Lien Notes evidencing the indebtedness resulting from the February Financing;

(e) the lack of any "fiduciary out" clause in the February Financing, thereby preventing Mobilicity from accepting any superior proposal;

(f) the manner in which a bare majority (51%) of the First Lien Noteholders purported to amend the First Lien Indenture, given the fact that those Holders had a conflict of interest and imposed amendments to the First Lien Indenture for their benefit which prejudiced the non-participating First Lien Noteholders, and which were contrary to the amending provisions of the First Lien Indenture; and

(g) the conflicts and breaches of duty created by appointment of the respondent Equity Financial Trust Company as Collateral Agent in relation to the February Financing.

4. For the most part, the Aziz Oppression Affidavit fails to address any of these issues. However, the Oppression Affidavit does make extensive reference to the discussions engaged in between Catalyst and Mobilicity regarding a potential financing in December 2012 - January 2013. The Aziz Oppression Affidavit also contains negative characterizations of Catalyst's philosophy and investment approach.

5. Attached hereto and marked as Exhibit A is a true copy of an extract from Catalyst's website, which describes several investments held in its portfolios, as well as a copy of Catalyst's "Guiding Principles." These materials reflect the fact that Catalyst engages in a variety of investment activities, many of which involve holding a long-term position in, and active management of, operating companies. Catalyst's philosophy is to "buy what we can build."

6. As a result, Catalyst engaged in informal discussions with representatives of Mobilicity in November and December 2012. In these discussions, Catalyst advised Mobilicity that it was interested in making an investment in Mobilicity and that Catalyst had developed a unique financing in furtherance of this objective.

7. In these discussions, Catalyst advised Mobilicity that it viewed the funding plan and financial model, which it had developed as proprietary in nature, and indicated that in order to present its model, certain protections were necessary.

8. Mobilicity apparently concluded that Catalyst was seeking to prevent Mobilicity from considering any other alternatives open to it and interpreted the documents which Catalyst had drafted as resulting in lengthy, self-renewing exclusivity arrangements. This interpretation was reflected in the email communications from Walied Soliman to Jon Levin, including an email dated December 14, 2012, a copy of which is attached hereto as Exhibit B.

9. The foregoing was a misinterpretation of Catalyst's intent. Catalyst recognized that Mobilicity and its directors were subject to certain fiduciary duties and that any form of lock-up or exclusivity arrangements which prevented compliance with such duties were not possible. Catalyst clarified its position and intentions in an email dated December 17, 2012 from Jon Levin to Walied Soliman. A copy of an email string containing this email is attached as Exhibit C hereto. Mr. Levin's email stated, in part:

> ... Catalyst has a well developed term sheet that it believes is fair, equitable and capable of attracting significant support from all constituencies. Catalyst recognizes that aspects of the term sheet appear in other restructurings but Catalyst is of the view that the package it has put

together is innovative, unique and proprietary. All it is seeking is reasonable protection for that package.

If you consider the draft confidentiality agreement we prepared as overreaching in terms of such protection, that was not our intent. Although not reflected in your emails from Friday night and yesterday, I thought this was made clear in our informal telephone conversation last Wednesday as well as in conversations between Jim Riley and Barry Goldberg.

In particular, in our discussion we indicated that the proposed period of exclusivity was intended to be for a defined time frame, which could only be extended if both parties agreed. The wording reflects this intent, not an "automatic" renewal: if different drafting is preferred by you to cover this point, Catalyst would welcome any suggestions. Moreover, we have also indicated that, if Mobilicity felt that a shorter time frame was more reasonable, Catalyst would consider such a modification. Of course, in the event negotiations during this process result in an agreed term sheet, Catalyst would expect that the ultimate definitive agreement re same would include customary "fiduciary out" clauses.

As for the two other provisions in the proposed terms (relating to confidentiality and damages) which you have described as "extraordinary," while I am not sure that I would share that view, based on the drafts which have been exchanged and our informal discussions, I am confident that these issues could be resolved quickly and without undue difficulty.

You have emphasized that Mobilicity wants to work cooperatively with Catalyst. My client welcomes this approach and accepts your statement at face value. Catalyst believes that it is in the interests of all concerned - including Mobilicity and its stakeholders – for focused discussions to occur with Catalyst regarding the financial proposal which Catalyst has developed. I would therefore encourage you to come back with alternative proposals to the extent you consider that necessary and that will allow a reasonable process to unfold and that will protect the confidentiality of Catalyst's intellectual property, on terms that are neither unreasonable nor extraordinary.

If you have a restructuring plan of your own to propose, Catalyst is open-minded and certainly prepared to consider it on the merits and to agree to reasonable confidentiality.

10. In light of subsequent developments, it is noteworthy that the above email went on to detail Catalyst's concerns regarding the divergent interests of certain of the First Lien Noteholders, as follows:

As previously communicated, independent of the desired discussions between Mobilicity and Catalyst, Catalyst is very concerned by the rumors it has been hearing about other potential options which Mobilicity may be exploring. In these circumstances, I respectfully suggest that Mobilicity needs to be alert to the fact that that there are a number of creditors who are conflicted because they are "cross dressers" whose economic interests are divergent from the interests of other creditors, including noteholders like Catalyst whose only investment is in the 9½ % bonds.

In our view, whatever transpires, creditor classes will have to be structured in order to achieve both substantive and procedural fairness. For example, if it is proposed that conflicted creditors would be entitled to use their votes in support of any refinancing that erodes such fairness, Catalyst would consider this to be highly inappropriate (and oppressive) unless the non-conflicted creditors were recognized as a separate class for voting purposes in any approval process. Catalyst believes that its concerns and views about these matters are shared by a majority of the other senior secured creditors.

11. Subsequently, Catalyst entered into a confidentiality agreement, which was attached as Exhibit X to my prior affidavit, and presented Mobilicity with two detailed term sheets. Among other things, the financing arrangements described in these term sheets would have provided $200 million of new funds to Mobilicity. Initially, these term sheets were well received by Mobilicity and their advisors, who were supportive of the Catalyst proposal and appeared to believe that it represented the only viable option for Mobilicity. For example, I was advised by Jon Levin and verily believe that one of Mobilicity's financial advisers, Barry Goldberg of Canaccord, was highly supportive of Catalyst's proposal. The views of Mr. Goldberg were described to Catalyst in an email from Mr. Levin dated January 3, 2013, which stated as follows:

"I just had a call from Barry Goldberg who advised me as follows:

1. He believes our deal is the only one that is capable of being executed. He has so advised Mobilicity.

2. They need to make some tweaks to the term sheet but the tweaks are just that and, in particular, he assures me that the tweaks will not affect our economics.

> 3. He is travelling and has other people's schedules to coordinate but hopes to be In a position to send us the tweaked term sheet Saturday.
>
> 4. Mobilicity may come back with a request for bridge financing. We discussed how they might do that and ensure we have priority. I suggested issuing us bonds which would have a higher face amount than the cash we advance with the difference to cover our fees. Barry said that he thought something like that would be quite workable."

Attached hereto and marked as Exhibit D is a true copy of the above email. I am advised by Mr. Levin and verily believe that its contents accurately describe the telephone conversation which he had with Barry Goldberg on January 3, 2013.

12. In these discussions, Catalyst did not seek to obtain access to any confidential information relating to Mobilicity's affairs. However, Catalyst believed that Mobilicity was facing significant cash flow problems and that there was considerable urgency to inject new money into the company, failing which, its business (and value) was at potential risk. Accordingly, Catalyst advised Mobilicity and its advisors that time was of the essence, and urged Mobilicity to sign off on the term sheets that Catalyst had proposed, so that the financing could be completed as quickly as possible.

13. The Aziz Oppression Affidavit states that the discussions with Catalyst broke off on or about January 6, 2013 for two reasons. According to Aziz, Mobilicity was (1) unwilling to agree to Catalyst's demands for exclusivity and (2) considered the $15 million break fee proposed by Catalyst to be unreasonable.

14. I do not believe that the summary of these issues contained in the Aziz Oppression Affidavit is accurate or complete. Catalyst's position was as follows:

(a) Catalyst made it clear to Mobilicity throughout that it recognized that Mobilicity's board must have the ability, as a result of their fiduciary duties, to enter into alternative financing arrangements if a "superior proposal" was made available to Mobilicity;

(b) Accordingly, if the contractual documents were finalized, Catalyst knew, understood and agreed that such agreements would contain "fiduciary out" provisions, which would enable Mobilicity and its board to opt out of its agreement with Catalyst in favour of a superior proposal;

(c) In this context, Catalyst also indicated that the contractual documentation to be entered into should contain a provision for a break fee, if Mobilicity opted out of the agreed upon financing in favour of the "superior proposal", pursuant to those "fiduciary out" provisions;

(d) In setting the quantum of the break fee referred to above, Catalyst was familiar with commercial practices and standards applicable to such fees, and believed th at the proposed fee was within commercial norms.

15. Mobilicity's understanding of the above matters was reflected, *inter alia*, in the emails and discussions between Catalyst and Mobilicity, in which reference was made to these concepts.

16. I cannot comment upon the actual reasons why Mobilicity decided to break off discussions with Catalyst in early January 2013, but it is puzzling why no alternative proposals were made by Mobilicity with respect to the "break fee". The assertions

contained in the Aziz Oppression Affidavit are even more puzzling having regard to the terms agreed upon by Mobilicity in the February Financing, namely:

(a) The February Financing included a payment of an upfront fee of $8.25 million for an advance of $15 million. On a proportional basis, this fee was grossly in excess of any break fee proposed by Catalyst (which would never have become payable unless a superior proposal arose). In addition, this amount of this upfront fee was outside commercial norms, and, it appears, contrary to the Criminal Code of Canada.

(b) Mobilicity agreed to an absolute exclusivity provision with no "fiduciary out" (in contravention of normal practice), as stated in section 21.10 of the Note Purchase Agreement (the "**NPA**"), which Mobilicity entered into on February 6, 2013:

> 21.10 Exclusivity
>
> Upon entering into this Agreement, the Issuer and each Guarantor agrees that it will not enter in bilateral arrangements with any party to provide any debt facility of any kind or similar financing arrangement, in each case for any purpose contemplated by this Agreement or any other similar purpose, in each case excluding the Follow-on Facility contemplated hereby, unless the consent of the Purchasers has been obtained.

17. Mr. Aziz is accurate in stating that after January 6, 2013, Mobilicity did not have any further discussions with Catalyst, although I informally encouraged Mobilicity to do so, without success. Instead of pursuing any further dialogue, Mobilicity entered into private, undisclosed negotiations with four First Lien Noteholders, who also held unsecured debt at the Holdings level. This resulted in the February Financing, to which Catalyst has objected.

18. The Aziz CBCA Affidavit attaches numerous documents and sets out Mobilicity's description of the plans of arrangement which are the subject of interim orders the CBCA issued by his Honour Judge Wilton-Siegel dated April 25, 2013.

19. To put these CBCA plans in context, it is evident that by at least early February 2013 Mobilicity and a previously unidentified group of First Lien Noteholders had entered into agreements with respect to the contents of Mobilicity's CBCA Filings. The fact is clear from the provisions of the NPA. Specifically, section 11.2(a) refers to a "Plan" which had been agreed upon, and which is defined in the NPA as follows:

> "Plan" means the plan of arrangement to be filed under the CBCA and containing substantially the terms set out in Schedule F hereto, in form and substance satisfactory to the Issuer, the Guarantors and each Purchaser and its Advisors.

20. As I have sworn previously, following the announcement of the February Financing, Catalyst requested that it be given a copy of the Schedule F referred to above so that it could understand the full extent of the commitments and undertakings which had been entered into as part of the new financing announced by Mobilicity on February 12, 2012. Despite these requests, Mobilicity and the First Lien Noteholders who were signatories to the NPA refused to provide the information.

21. In describing the CBCA plans, Aziz repeatedly refers to the "Mobilicity Group", and it is clear that the plans themselves have been structured in a manner which implements a *de facto* consolidation of the separate debts which currently exist in two separate legal entities—Mobilicity and Holdings.

22. The financial disclosure made in the materials which have been circulated in relation to the CBCA plans, including the December 31, 2012 audited financial statements, is all

provided on a consolidated basis. As a result, it is impossible to fully understand and assess the financial affairs of Holdings and Mobilicity, standing alone. However, based on their known capital structure, there are clearly very different categories of debt, debt holders and stakeholders as between Mobilicity and Holdings.

23. In this regard, three types of unsecured debt currently exist at Holdings—Unsecured Senior Notes ($147.2 million as at March 31, 2013), Unsecured Pari Passu Notes ($85.1 million) and Unsecured Subordinated Notes ($37.2 million). Creditors holding these notes currently have no claim, direct or indirect, against Mobilicity, and their sole source of any potential recovery in relation to their notes is the value, if any, of Holdings' 100% ownership of Mobilicity.

24. In contrast, aside from the February 2013 New Note financing whose propriety is in issue in this proceeding, the only debt at the Mobilicity level is $195 million of First Lien Notes. This debt was and is secured by a first lien against the Spectrum purchased by Mobilicity in 2008 and other assets of Mobilicity, and is subject to numerous covenants and restrictions, including detailed, specific restrictions on further borrowings. These provisions prohibited the creation of further liens beyond specifically defined "Permitted Liens", and were intended to protect the interests of the First Lien Noteholders.

25. The *de facto* consolidation referred to above is clear from the fundamental structure of the Recapitalization Plan. This plan, if approved, would result in the following:

(a) All of the existing *unsecured* indebtedness at the Holdings level will be completely extinguished and partially exchanged for new *secured* Second Lien Notes in the amount of up to $187.5 million with attributes that are materially different than the existing *unsecured* debt. In this regard the new Second Lien Notes will be guaranteed by Mobilicity, *which guarantee will be secured by a general security agreement over all of Mobilicity's assets.* This exchange would also have potential tax consequences which are difficult to quantify.

(b) $75 million of the new *secured* Second Lien Notes will be issued in return for the $75 million financing referred to in the Recapitalization Plan materials. The balance of the new *secured* Second Lien Notes ($112.5 million) will be issued in exchange for the extinguishment of a portion of Holdings' current *unsecured* indebtedness.

(c) As noted above, the new indebtedness of $187.5 million described in the CBCA plan documents will be secured by a charge against the assets of Mobilicity. As described below, this is in contravention of the currently existing Security Agreement applicable to the First Lien Notes, which restricts the creation of any new liens against these assets.

(d) The $75 million funding referred to in the Recapitalization Plan does not result in new funds of $75 million. Instead, $33.6 million of these funds will immediately be used to pay off the Second Lien Notes which had been issued under the February Financing. In other words, $33.6 million of funds of the "new funds" referred to in the CBCA plan documentation will not be available for use at Mobilicity, but will be used to repay the First Lien Noteholders who participated in the February Financing. The repayment of this $33.6 million includes the repayment of the first and second tranches disclosed in the NPA, accrued interest thereon, and the $8.25 million extraordinary fee.

26. In the above structure, the First Lien Noteholders who participated in the February Financing would derive the following benefits:

(a) They receive an immediate cash payment of $8.25 million to retire the Second Lien Notes issued under the NPA as a "Bridge Funding Fee", which were deemed to be fully earned and payable thereunder upon the first advance of $15 million;

(b) They obtain the ability to exchange up to $112.5 million of unsecured debt held at the Holding level, which likely has no current value,. for new Second Lien Notes guaranteed and secured at the Mobilicity level, thereby significantly improving their likelihood of recovery in relation to said indebtedness;

(c) They obtain additional undisclosed fees in relation to the February Financing and the plans of Arrangement; and

(d) They obtain 90% of the equity of Holdings and 100% of the voting rights of Holdings.

27. By reason of these benefits, these First Lien Noteholders have a significant financial interest to have the CBCA plans approved. Their interests are fundamentally different from and adverse to the interests of First Lien Noteholders like Catalyst, who do not derive any such benefits, and whose sole interest is to assure that Mobilicity and its assets are not adversely affected by any new financing.

28. The foregoing benefits are being conferred upon the First Lien Noteholders in circumstances where there is a significant disparity in information between themselves and the other First Lien Noteholders, including Catalyst, who did not participate in the February Financing.

29. In this regard, the NPA indicates that the First Lien Noteholders who participated in the February Financing have had and continue to have access to the following information and documentation:

(a) the cash flow forecast defined in section 11(1)(m) of the NPA, i.e. a weekly cash flow forecast for Mobilicity and certain guarantors;

(b) bi-weekly reports detailing the actual cash flows for Mobilicity and the guarantors, together with explanation for any variances from the forecasts that have occurred;

(c) the analysis and information contained in the "Adequate Protection Letter" referred to in paragraph 11(1)(g) and section 21.3 of the NPA, which appears to acknowledge that, as of February 6, 2013, there was *not* adequate protection for the holders of the First Lien Notes to permit any further financing; and

(d) the contents of the Disclosure Letter defined in the NPA and containing the information and referred to in paragraphs 12(e), (g), (m), (n), (p), (q), (r) and (s) of the NPA.

30. None of this information or documentation has been provided to Catalyst or, so far as Catalyst is aware, any other First Lien Noteholders (except the First Lien Noteholders who participated in the February Financing) or any other stakeholder in the proposed

CBCA plans. As a result, the disparity of information which existed at the time of and following Mobilicity's announcement of the February Financing has continued. This disparity adversely impacts the ability of Catalyst and other interested stakeholders to make informed assessments of the CBCA plans that have been circulated and the decisions and elections referred to therein.

31. I believe that the disparity of information referred to above is also potentially relevant to the support agreements which Mobilicity claims have been signed. Catalyst has made preliminary inquiries relating to these support agreements. It appears that some of the First Lien Note Holders may have signed support agreements without appropriate disclosure of material facts germane to such agreements, including, for example, facts relating to the extraordinary $8.25 million fee and the payment thereof, or the loss under the Acquisition Plan of the make-whole required by section 3.07 of the First Lien Indenture.

32. In addition, the Reorganization Plan fails to disclose the information necessary to determine how long the financing under the Recapitalization Plan will enable Mobilicity to sustain is operations or what business plan exists for any longer term operations. In this regard:

(a) Although the materials which have been circulated indicate that there will be $56.2 million cash on hand if the Recapitalization Plan is implemented, this fails to take into account fees and expenses that will be charged against this sum. Moreover, this figure is stated to be as at March 31, 2013;

(b) The quantum of the above fees and expenses are not disclosed in the material which has been circulated by Mobilicity, but I believe they are significant;

(c) I also believe that Mobilicity is expending cash at a high monthly rate well in excess of its monthly income. In this regard, for the quarter ending December 31, 2012, according to the CBCA Affidavit, the "cost of maintaining the Mobilicity Group's network, paying distributors and other service partners exceeded revenue and financing proceeds by approximately $12 million prior to financing costs, or $30 million in total" (i.e., approximately $10 million per month);

(d) Based upon, *inter alia*, the foregoing information and the contents of paragraphs 27-28 and 31 of the Aziz CBCA Affidavit, paragraphs 21-24 of the Aziz Oppression Affidavit and the contents of the Recapitalization Plan, it appears that Mobilicity is currently insolvent or on the verge of becoming insolvent.

33. In my initial affidavit, I expressed concern and identified deficiencies in relation to the subordination provisions of the NPA, given the fact that the "Permitted Liens" defined in the First Lien Indenture and the negative covenant contained in the Security Agreement had been amended without Catalyst's knowledge or consent. For ease of reference, the amendments which were enacted at that time are detailed in Exhibits E and F hereto. These amendments had resulted, as at the date of my February 29, 2012 affidavit, in the creation of additional liens against Mobilicity's assets in the amount of $23.5 million (i.e. first tranche of financing in the amount of $15 million and the $8.25 million fee paid to the First Lien Noteholders).

34. One of the concerns I expressed in my prior affidavit related to the expiry date of the Second Lien Notes issued under the February Financing. Under the Recapitalization Plan, these obligations will immediately be paid in full, thereby affirming their validity and adding to Mobilicity's continuing debt. While the Recapitalization Plan contemplates that the new Second Lien Notes have an expiry date of September 25, 2018, the Backstop Parties referred to in the CBCA plan materials have the ability to cause interest payments to be made on this debt on June 30, 2013. Moreover, the Inter-Creditor Agreement that has been proposed contains a number of limitations and qualifications, including the following:

(a) The restrictions on the ability of the Second Lien Noteholders to undertake certain actions and steps are, in large measure, limited to "standstill" periods of 90 days;

(b) Depending upon when and how often any "Default" arises within the meaning of the new Second Lien documentation, there could be multiple standstill periods following which Second Lien Noteholders could exercise enforcement rights, unless the First Lien Noteholders decide to do so;

(c) The standstill provisions are further complicated by requirements that, in order for the First Lien Noteholders to forestall the ability of the Second Lien Noteholders to enforce their security and control realizations on collateral following the expiry of any standstill period, the First Lien Noteholders are obligated to engage in enforcement actions themselves and to pursue such actions diligently, regardless of whether such Holders would otherwise elect to undertake such actions;

(d) The Inter-Creditor Agreement contains restrictions on the ability of the First Lien Noteholders to amend the First Lien Indenture; and

(e) The Inter-Creditor Agreement contains waterfall provisions that grant the Second Lien Noteholders an indemnity up to $2.5 million of costs incurred by them in relation to actions taken to collect their debt, including the institution of collection proceedings, in priority to the repayment of principal due and owing under the First Lien Notes.

35. In summary, the provisions of the Inter-Creditor Agreement fall short of what is necessary to create truly silent and fully subordinated second liens as summarized in my prior affidavit and Exhibit "V" thereto.

36. The issuance of the new Second Lien Notes, together with the guarantee and security agreement at the Mobilicity level creates issues, complications, and potential disputes regarding the timing, circumstances, and methods by which the First and Second Lien Noteholders could enforce their security instruments. This is one reason why section 4.1(c) of the Security Agreement applicable to the First Lien Notes prohibits the creation of additional liens on the collateral whether or not the liens are subordinated.

37. The creation of the new Second Lien Notes and the Security Agreement relating thereto is in contravention of the existing negative pledge referred to above and is detrimental to the interests of the First Lien Noteholders. As a result, section 9.02(9) of the First Lien Indenture requires the consent of each Holder affected before any amendments allowing such additional liens can be validly enacted.

38. Instead of following these provisions, the majority of the First Lien Noteholders engaged in self-dealing by imposing amendments to relax the restrictions contained in the negative pledge to obtain benefits for themselves under the February Financing. This conduct has been expanded and extended in the Recapitalization Plan which has been proposed. As set out above, that plan would result in the creation of new liens in relation to the collateral currently held as security by the First Lien Noteholders in the amount of $187.5 million as described in the Recapitalization Plan, approximately six times the amount of the lien which was unilaterally created under the February Financing. As before, this action has been taken or has been proposed to be taken without regard to the aforementioned amendment provisions contained in the First Lien Indenture.

39. In the result, Catalyst's objections to the creation of the new liens in the February Financing apply equally to the new liens now contemplated in the amount of $187.5 million. Aside from the dramatically increased quantum of such new liens, as explained above, $112.5 million of said liens are being issued in conjunction with the guarantee referred to above for the purpose of extinguishing existing unsecured obligations at the Holdings level with no corresponding consideration or benefit to Mobilicity, and with significant prejudice to Mobilicity's stakeholders.

40. In my view, the foregoing structures, transactions, and facts required the Board of Directors of Mobilicity to act independently from Holdings and to consider the interests of Mobilicity and its stakeholders, as opposed to the interests of the unsecured creditors of Holdings, in assessing the proposed plans of arrangement. This never occurred as it is clear from the Aziz CBCA Affidavit that the advice received and decisions made were at the Holdings level and that Holdings simply directed its subsidiary to provide a guarantee

and security in relation to the new Second Lien Noes without any apparent consideration of the rights, interests and reasonable expectations of the security holders at Mobilicity whose interests were affected, i.e., the First Lien Noteholders.

41. The failure of Mobilicity's Board of Directors to act independently in the interests of Mobilicity's stakeholders is particularly significant in light of the fact that, contrary to the *Policy Concerning Arrangements Under Section 192 of the CBCA of the Director under the CBCA*, as articulated in section 4.04 of thereof, no fairness opinion has been provided to the security holders of Mobilicity. Section 4.04 of the policy states as follows:

> 4.04 Where the plan of arrangement contemplates a possible compromise of debt (see discussion in paragraph 2.05), the Director's position is that an opinion report of an independent financial adviser be provided to all security holders, setting out the reasons why the plan of arrangement is advantageous to them. <u>The report should demonstrate that each class of security holders would be in a better position under the arrangement than if the corporation were liquidated.</u> A financial adviser, in these circumstances, should generally be an accountant or person with a financial background who has experience in assessing liquidation values. [Emphasis added.]

42. In the result, all or virtually all of the acts of oppression complained of in connection with the February Financing have been rewarded, continued or in some cases expanded upon by the terms of the CBCA plans which have now been proposed. It is also evident that the terms of the current plans formed an integral part of the February Financing challenged by Catalyst.

43. Apart from the foregoing issues and concerns, the Recapitalization Plan does not contain any long-term business model, or any explanation of how Mobilicity will be able to sustain its operations for any appreciable period of time.

44. In order to fully understand the implications of the Recapitalization Plan, it would be necessary for the affected stakeholders and the Court to have the following information:

(a) the projected cash position of Mobilicity as of May 31, 2013 (not March 31);

(b) the actual net cash which will result from the financing, net of all transactions, advisor and professional fees;

(c) Mobilicity's current monthly burn rate, based upon current forecasts and up-to-date results.

45. As indicated above, this information is available to Mobilicity and some of the First Lien Noteholders, but has not been disclosed to Catalyst or included in the CBCA plan materials. However, based on certain assumptions (including my belief that between December 31, 2012 and the date of Mr. Aziz's CBCA Affidavit, Mobilicity's subscriber base has materially declined), I would guess that the actual cash available to Mobilicity as a result of the proposed Recapitalization Plan will last for less than six months.

46. It is clear that the proposed Recapitalization Plan does not provide any funding to enable Mobilicity to participate in the 700MHz Spectrum auction announced by the Government of Canada in March 2013. This announcement, which is attached hereto as Exhibit G, indicates that anyone who intends to bid on the Spectrum is required to register and provide evidence of their financial ability to participate in the auction in a staged manner, commencing on June 11, 2013. In my view, in order for Mobilicity to be considered a serious participant in Canada's cellphone/wireless business, it is essential that Mobilicity take part in and acquire Spectrum in this auction. Yet, under the Recapitalization Plan, there is no funding to do so.

47. Although not disclosed in the affidavit materials filed or in any of the documentation which has been circulated, some indication of Mobilicity's "plan" can be gleaned from recent newspaper coverage contained in the May 5, 2013 edition of the Toronto Globe & Mail, which refers to Mobilicity and states as follows:

> Facing a June 11 deadline for its first deposit for the next auction, Mobilicity is asking for help on two fronts when it comes to capital. First, it wants Ottawa to allow new entrants to pay for any new spectrum licences in installments that would stretch over an entire licence term. In the case of the 700 MHz frequency, which will be auctioned off in November, licence terms have been set at 20 years.
>
> Second, Mobilicity is asking that Ottawa return "the entire auction proceeds to new entrants" for the advanced wireless services (AWS) spectrum that they acquired in 2008.
>
> "This would be repaid back to the Department subject to a nominal rate of interest, over the remaining length of the licence term," the carrier added.
>
> ...
>
> For its part, Mobilicity said its request for help, if approved, would "immediately alleviate the pressure currently felt by the new entrants" while ensuring sustainable competition.

48. Attached hereto and marked as Exhibit H is a true copy of this article.

49. The Mobilicity position referred to in the above article is based upon a written submission filed by Mobilicity with the Federal government, dated April 3, 2013, which has just become publically available because the "comment period" referred to therein has recently closed. Attached hereto and marked as Exhibit I is a true copy of said submission. In its submission, Mobilicity stated that "the harsh reality is that wireless competition is on life support..." and asked the Government of Canada (a) to return approximately $250 million, which Mobilicity paid to acquire Spectrum in 2008, (b) to retroactively change the rules for the 2008 Spectrum Auction by allowing Mobilicity to

pay for the cost of the 2008 Spectrum over a 20 year period, and (c) to change the detailed rules announced in March for the auction of 700 MHz Spectrum (referred to above), by allowing Mobilicity to bid and pay over a 20 year period for any 700 MHz Spectrum it acquired in the auction.

50. While it is somewhat speculative to glean Mobilicity's actual plan from the above material (and in my view stakeholders should not be placed in the position of having to analyze Mobilicity's "plan" in this manner), it appears that Mobilicity's intention is to obtain stop-gap funding for a few months, in the hope that before those funds are exhausted, Mobilicity's request that the Government pay it $250 million and fundamentally change the Spectrum auction rules will bear fruit. In my view, if this is Mobilicity's "plan", it represents somewhat of a Hail Mary. In my view, this should, in any event, be disclosed in the materials circulated in connection with the proposed CBCA plans, so that the stakeholders and the Court can properly assess the merits and fairness of those plans.

51. Many of the foregoing observations apply to the Recapitalization Plan, which is fundamentally different than the Acquisition Plan.

52. Although it appears highly unlikely that a buyer will emerge in the time prescribed, under the Acquisition Plan the intention appears to be that the proceeds of any sale will be used to repay the First Lien Notes. However, if the Acquisition Plan were to proceed, the CBCA plan documentation suggests that the aforementioned repayment would be limited to the principal and accrued interest payable under the First Lien Notes, and would not include the significant "make whole" premium required by section 3.07 of the First Lien

Indenture. Such a result would be a breach of the provisions of the First Lien Indenture and would cost the First Lien Note Holders in excess of $70 million. Moreover, any attempt to amend the aforementioned provisions would require unanimous approval under section 9.02 of the First Lien Indenture.

53. As in the case of the third party releases which are proposed in both of the CBCA plans, under the Acquisition Plan no consideration would be provided to Catalyst (or other similarly placed First Lien Noteholders) for this abrogation of Mobilicity's obligations under the First Lien Indenture. Of course, the First Lien Noteholders who participated in the February Financing stand in a different position as they would have this loss offset by the extraordinary fees, the new security and other financial benefits that are described herein.

54. As noted above, in December 2012, Catalyst was interested in making a long-term investment in Mobilicity and presented term sheets to provide significant financing for this purpose.

55. The Aziz Oppression Affidavit attaches recent press articles and a press release by Catalyst, which confirm Catalyst's continuing interest in Mobilicity, and which reflect Catalyst's desire that a viable solution to Mobilicity's business and financing issues be arrived at.

56. In light of the above, Catalyst has given anxious consideration as to a means to resolve the litigious disputes between itself and Mobilicity.

57. On the one hand, Catalyst firmly believes that the February Financing was abusive and oppressive, that many of the objectionable elements of that financing are carried over into the plans of arrangement now being proposed under the CBCA, and that, as outlined above, no long-term or sustainable business model for Mobilicity has been presented to the Court. In these circumstances, for all the reasons alluded to herein, Catalyst believes that the plans which have been proposed are unfair and unreasonable and should not be approved by the Court.

58. On the other hand, Catalyst is very aware of the uncertainties and the cost, both direct and intangible, that the continuation of its oppression case and its opposition to Mobilicity's plans creates. Catalyst strongly believes that a consensual business solution, as opposed to continuing litigation, is a highly desirable outcome. Finally, Catalyst believes that, barring a somewhat miraculous bailout by the Federal Government or an unlikely surfacing of a third party buyer, it is inevitable that Mobilicity will need to raise significant additional funding in the near future if it is to survive and seriously participate in Canada's cellphone/wireless business sector.

59. As a result, despite its fundamental objections to the February Financing and the current CBCA plans, over the past weekend, Catalyst's corporate counsel, Jon Levin, sent a settlement offer to Mobilicity via email. The purpose, *inter alia*, was to allow the parties to focus on a co-operative approach for the reasons outlined above. The email indicated that Catalyst would provide its support for the CBCA plans on the following terms:

> 1. Catalyst is concerned re conflicts between Holdings and Opco and requires that Opco have a majority of independent directors one of whom will be picked by Catalyst. The others would be picked by the other major Noteholders or, if picked by Holdings, will require Catalyst's approval not to be unreasonably withheld. As I mentioned to you, I do not understand

why Holdings exists post plan implementation and am puzzled why, for example, we have not seen audited statements for Holdings and separate ones for Opco. Aside from other conflict concerns, the absence of those statements raises concerns re existing conflicts between the two entities.

2. The make-whole has to be fully protected and that must be the case whether there is a recap plan or an acquisition followed by redemption of the notes. If I understood you correctly, you expressed the possibility that there could be circumstances where an acquisition occurs, the notes are redeemed and no make-whole would be payable. Some examples would be appreciated as Catalyst will require that it understands in what circumstances you believe the notes could be redeemed without the make-whole being paid.

3. The most favoured nations concept must apply to the support arrangements even though Catalyst was not an initial supporting Noteholder. Catalyst is the largest Noteholder and cannot be in a position where it signs a support joiner in circumstances where other Noteholders have more favourable rights In particular, Catalyst cannot be in a position where, if it has signed a support joiner re the 2 plans as requested, either plan could thereafter be changed without its consent.

4. Catalyst must be entitled to the 2% fee.

5. We must be satisfied that (a) the support agreement terms and (b) the subordination terms for the new debt are both market.

Obviously, if there is a meeting of the minds on each of these points, the oppression action would be discontinued.

60. The above email requested a response by the close of business on Tuesday May 7, 2013.

61. While progress has been made toward a meeting of the minds, it has not been possible to arrive at any agreement within the above time frame and, as a result, this affidavit has been finalized and delivered to the Respondents.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 9th day of May, 2013.	)))))	
Commissioner for Taking Affidavits (or as may be) Diana M. Soos	))	**Gabriel De Alba**

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Commercial List No CV 13-10016-00CL

THE CATALYST CAPITAL GROUP INC.
Applicant

- and -

DATA & AUDIO – VISUAL ENTERPRISES WIRELESS INC., et al
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF a Note Purchase, Guarantee and Backstop Agreement dated February 6, 2013 made by Data & Audio-Visual Enterprises Wireless Inc. Equity Financial Trust Company, and certain purchasers of notes thereunder whose identity is unknown (referred to in the Title of Proceedings herein as "The Unknown Purchasers")

AFFIDAVIT OF GABRIEL DE ALBA
(Sworn May 9, 2013)

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

David C. Moore LSUC # 16996U
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Lawyers for the Applicant

F

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

Daid Moore

A Commissioner, etc.

(p) The Issuer and the Guarantors shall not participate in any material discussions with any party (other than their legal and financial advisors) with respect to any sale or material transaction, refinancing, or any alternative thereto, in each case (upon conferring with their financial advisor) without providing reasonable notice to the Purchasers and Goodmans LLP, and an opportunity for a representative of Goodmans LLP or the financial advisor to the Purchasers to participate in such discussions.

(q) The Issuer and the Guarantors shall not, directly or indirectly through any representative: (i) accept, approve, endorse or propose publicly to accept, approve, endorse or recommend any transaction that is an alternative to the Refinancing and Recapitalization (as such term is defined in the Companies' Support Agreement) (an "**Other Transaction**"); or (ii) enter into, or publicly propose to enter into, any agreement in respect of any Other Transaction, except in accordance with the Companies' Support Agreement.

(r) The Issuer and the Guarantors shall promptly (and in any event within 24 hours of receipt by any of them) notify the Purchasers and their Advisors, at first orally and thereafter in writing, of any proposal in respect of any Other Transaction, in each case received after the date hereof, of which it or any of its representatives are or become aware, or any amendments to such proposal in respect of any Other Transaction, any request for material discussions or negotiations, or any request for non-public information relating to the Issuer or any Guarantor in connection with such Other Transaction or for access to the books or records of the Issuer or any Guarantor by any person that informs the Issuer or any Guarantor that it is considering making, or has made, a proposal with respect to any Other Transaction and any amendment thereto; and the Issuer shall promptly provide to the Purchasers and Goodmans LLP a description of the material terms and conditions of any such proposed Other Transaction or request. The Issuer and the Guarantors shall keep the Purchasers and Goodmans LLP informed of any material change to the material terms of any such proposed Other Transaction.

G

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

David Moore

A Commissioner, etc.

CITATION: The Catalyst Capital Group Inc. v. Data & Audio-Visual Enterprises Wireless Inc., 2013 ONSC 2170
COURT FILE NO.: CV-13-10016-00CL
DATE: 20130411

SUPERIOR COURT OF JUSTICE - ONTARIO
COMMERCIAL LIST

In the matter of a Note Purchase, Guarantee and Backstop Agreement dated February 6, 2013 made by Data & Audio-Visual Enterprises Wireless Inc., Equity Financial Trust Company, and certain purchasers of notes thereunder whose identity is unknown (referred to in the title of Proceedings herein as "the Unknown Purchasers")

RE: THE CATALYST CAPITAL GROUP INC., Applicant

A N D:

DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES LEASING INC., EQUITY FINANCIAL TRUST COMPANY, AND THE UNKNOWN PURCHASERS, Respondents

BEFORE: MESBUR J.

COUNSEL: *Marc Kestenberg and Evan Cobb,* for Data & Audio-Visual Enterprises Wireless Inc., Data & Audio-Visual Enterprises Holdings Inc., Data & Audio-Visual Enterprises Leasing Inc., Respondents, moving parties

Fred Myers, for the Ad Hoc Committee of Noteholders

Janice Wright and Greg Temelini, for Equity Financial Trust Company, Trustee

David Moore, Diana Soos and Murray Braithwaite, for the Applicant, responding party on the motion

HEARD: March 26, 2013

E N D O R S E M E N T

The motion:

[1] The applicant, The Catalyst Capital Group Inc., (Catalyst) is a significant creditor of the respondent, Data & Audio-Visual Enterprises Wireless Inc., ("Wireless"). In April

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

David Moore

of 2011 Wireless issued debt of $195 million, structured under a number of credit documents. First Lien Senior Secured Notes, (the Notes) evidence the debt. The respondents Data & Audio-Visual Enterprises Holdings Inc. and Data & Audio-Visual Enterprises Leasing Inc. (the Guarantors) have guaranteed the Notes.

[2] There is an Indenture among Wireless, the Guarantors and Equity Financial Trust Company as trustee whose terms govern the Notes. Wireless' obligations under the Indenture are also secured by security interests granted in favour of Equity, as collateral agent. The security interests are created by a Security Agreement. The security interests can only be enforced if there is an Event of Default under the Indenture. "Event of Default" is a defined term under the Indenture.

[3] The Indenture is the primary, governing document. The credit documents say that if there is a conflict among the terms of the Indenture, the Security Agreement or the Notes, the Indenture's terms prevail.

[4] Catalyst holds more than 25% of the aggregate principal amount of the Notes. Catalyst has started this application to seek relief from oppression. The basis of Catalyst's claim arises out of Wireless' entering into a secondary financing with notes subordinate to the Notes Catalyst holds.

[5] Simply put, Catalyst says that when Wireless obtained new financing through "unknown purchasers" of these secondary notes, Wireless preferred the interests of the unknown purchasers and thwarted Catalyst's reasonable expectations. Catalyst makes broad and sweeping allegations of oppression against Wireless.

[6] Catalyst seeks disclosure of all the terms of the new financing and related broad disclosure. At the end of the day, Catalyst wants the court to set aside the new financing and the new note securing it.

[7] Wireless and the Guarantors move to stay the application on the basis that Section 6.06 of the Indenture is a "no action" clause that prohibits Catalyst from commencing this proceeding.

[8] Section 6.06 reads as follows:

> 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 than 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.

[9] The issue is whether the provisions of 6.06 are wide enough to encompass Catalyst's claim. If they are, the application must be stayed so that Catalyst can comply with its provisions. If they are not so broad, then Catalyst's application may continue.

<u>The parties, the facts and the parties' positions:</u>

[10] Catalyst holds over 25% of the aggregate principal of the outstanding Notes. Wireless needs additional financing, and has arranged it pursuant to secondary notes with some of the other Note holders (excluding Catalyst) under the Indenture. Catalyst does not know who these secondary noteholders are. Catalyst refers to them in the title of proceedings as the "Unknown Purchasers".

[11] Equity Financial Trust Company is a trust company. Equity is the trustee under the Indenture as well as the collateral agent. The "Unknown Purchasers" are those who have provided secondary financing to Catalyst under another instrument. Equity is the collateral agent in that secondary financing.

[12] When Wireless began to look for additional secondary financing Catalyst made a proposal to Wireless to provide a comprehensive refinancing package that would consolidate the existing debt with the additional debt, all in favour of Catalyst. Wireless declined, and opted instead to obtain secondary financing through a second debenture in favour of a number of the parties who also hold some of the first Notes. Because of the terms of the secondary financing, the names of those who have advanced the financing are confidential. Catalyst refers to them as "the Unknown

Purchasers". Their counsel, Mr. Myers, calls them the "Ad Hoc Committee of Noteholders".

[13] Catalyst takes the position the secondary financing is oppressive to it. It has launched this application, seeking relief from what it characterizes as oppressive conduct. Catalyst formulates its claim as arising from Wireless' conduct in entering into the new financing, and the oppressive result of that new financing. The majority of the Note holders under the Indenture approved the new financing. Catalyst complains that it was not consulted about it and did not provide its consent.

[14] Catalyst goes on to say that the new financing contains "several unusual and prejudicial features" including the financial terms, maturity date, interest rate and fees, insufficient subordination of the Notes, and so on. Catalyst also alleges that as collateral agent under the second financing, Equity has placed itself in a position of conflict.

[15] Catalyst sets out its reasonable expectations as including, among other things:[1]

a) That any new financing would be on terms consistent with usual commercial terms and practices;

b) Subordinate security holders would not be placed in a position of *de facto* economic/commercial control over Wireless' affairs;

c) That if any amendments were made to the Indenture, the Noteholders would immediately be provided with enough information and documentation to understand and analyse the effects and implications of them, in relation to both their legal rights and their economic interests;

d) That if any amendments were made to the Indenture, their effects would not adversely affect the economic or legal interests of the Noteholders;

e) That neither Wireless nor the Trustee would tolerate a situation where some of the Noteholders had "informational advantages" over other Noteholders in relation to the new financing; and

f) The Trustee would not be placed in any conflict or potential conflict of interest.

[1] Schedule A to Catalyst's Notice of Application

[16] Catalyst takes the position that the secondary financing has essentially violated these reasonable expectations, resulting in Catalyst's being oppressed.

[17] Catalyst's biggest concern is that money will be advanced in late May under the second financing, with the attendant payment of significant fees. Catalyst says that if it cannot proceed with this application then its complaint will have become moot.

[18] Catalyst suggests the no action clause is limited to claims arising because of Default under the Indenture. It says it is not complaining about any "default" under the Indenture. Thus it reasons this kind of application for relief from oppression lies far outside the scope of the no action clause and the clause therefore does not apply to this application.

[19] Wireless takes the position that Catalyst's application comes squarely within the types of actions contemplated by the clause and is therefore barred until such time as Catalyst has complied with the notice to the Trustee and other provisions of the clause. That is the basis for its motion to stay the application.

[20] The Unknown Purchasers support Wireless' position. They go further, and characterize Catalyst as nothing more than a "bitter bidder", who wants to stop the current financing because its own refinancing proposal was rejected.

[21] Equity takes no position on the motion.

The law:

[22] "No action" clauses are a common feature of Indentures such as this one. Oppression claims have been considered in a number of Canadian cases in the context of no action clauses. In some cases, courts have found the claims barred by the no action clause. In others, they have not. What emerges from the cases is that the result in any case will depend entirely on the actual wording of the indenture in question.

[23] Canadian courts had not adjudicated issues surrounding no action clauses until Farley J. did so in *Millgate Financial Corp. v. BF Realty Holdings Ltd.* [2] He looked at jurisprudence from both American and English courts, and described the rationale for no-action clauses by quoting from *Feldbaum v. McCrory Corp.*[3]:

> ... in consenting to no-action clauses by purchasing bonds, plaintiffs waive their rights to bring claims that are common to all bondholders,

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[2] [1994] O.J. No. 1968 (Gen.Div.)

[3] 1992 Del.Ch. LEXIS 113 (June 1, 1992)

> and thus can be prosecuted by the trustee, unless they first comply with the procedures set forth in the clause or their claims are for the payment of past-due amounts...
>
> The policy favoring the channelling of bondholder suits through trustees mandates the dismissal of individual bondholder actions no matter whom the bondholders sue. So long as the suits to be dismissed seek to enforce rights shared ratably by all bondholders, they should be prosecuted by the trustee. Moreover, like other no-action clauses, the clauses at issue here explicitly make their scope depend on the nature of the claims brought, not on the identity of the defendant. For example, the E-II clauses quoted earlier begin: "A Securityholder may not pursue any remedy with respect to this Indenture of the Securities unless..."

[24] The Ontario Court of Appeal has also specifically addressed the issue of no action clauses. In this regard, their analysis in *Casurina Limited Partnership v. Rio Algom Ltd.*[4] is helpful. The court agreed with the reasoning of the decision below, saying:

> Spence J. agreed with the rationale for giving a facially unlimited no-action clause a broad interpretation. However ... he conducted a further analysis of the no-action clause read together with the broad powers of the trustee contained in s. 12.11 of the indenture before concluding, based on the wording of the indenture read as a whole, that the clause prevents individual bondholders from bringing an oppression action against the issuer or any other party.

[25] From these decisions I infer claims barred by no action clauses must first, be common to all bondholders, and second, be claims that can be prosecuted by the Trustee. While no action clauses will be interpreted broadly, they must still be considered in the context of the wording of the indenture read as a whole. Here, the question is whether the applicant's oppression claim falls into these categories.

Discussion:

[26] The no action clause (section 6.06 of the Indenture) says, "No holder of a note may pursue any remedy with respect to the Notes or Indenture" unless it complies with items 1 – 6 set out in the section. There is no question Catalyst has not complied with any of them, other than being the holder of at least 25% of the aggregate principal amount of the Notes.

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[4] [2004] O.J. No. 177, 181 O.A.C. 19, affirming [2002] O.J. No. 3229 (S.C.J.)

[27] Catalyst concedes it is a holder of a Note. The question is whether "any remedy with respect to the Notes or Indenture" is broad enough to capture this application. Is the application seeking a remedy "with respect to the Notes or Indenture"?

[28] Catalyst says there are three main reasons why 6.06 does not apply to its application:

a) The clause does not apply to oppression claims;

b) There has been no Event of Default, and therefore the claim is not one the Trustee can bring; and

c) Even if the clause applies, there are exceptions that would apply to permit Catalyst's application to go ahead.

[29] To support its position, Catalyst points to subparagraph (1) which requires a Noteholder to give notice to the Trustee that "an Event of Default" is continuing. It suggests that this means the no action provision only applies to situations where the proposed action is in relation to an Event of Default. Catalyst reasons that since it has not suggested there is an Event of Default as defined under the Indenture, the clause cannot apply.

[30] Catalyst relies on *Millgate* [5] in which Farley J took a narrow view of a no action clause's ambit. There, the clause in question said:

> No holder of any [Debenture] or coupon shall have any right to institute any action, suit or proceeding at law or in equity for the purposes of enforcing payment of the principal or any premium or interest on any [Debenture] or coupon, or for the execution of any trust or power hereunder or ... for any other remedy hereunder ... unless.... [the Trust Indenture then sets out the preconditions such as notice, indemnity, etc.]

[31] There, the court limited the clause's reach to those circumstances in which the plaintiff was alleging that BF was in breach of its contractual obligations pursuant to the payment of principal and interest under the Debentures being in default. Since that was not the essence of the claim, it was permitted to proceed.

[32] Wireless says that Catalyst's application is grounded in the Indenture itself, and even though Catalyst has dressed the application in oppression's clothes, the application really seeks a remedy with respect to the Indenture or the Notes and thus

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[5] Note 2, above

must be stayed. It says that Catalyst's "reasonable expectations" are based on the debt instrument itself. Since "reasonable expectations" are the foundation of oppression relief,[6] Wireless reasons Catalyst's claim must arise out of the Indenture, and be "with respect to the Indenture or the Notes". It says if there is no default under the Indenture, then there is no way Catalyst's reasonable expectations have been defeated. Put another way, if Catalyst's reasonable expectations have been defeated, that defeat must arise only out of the terms of the Notes or Indenture which create the framework for those reasonable expectations.

[33] Wireless relies on the reasoning in *Casurina*[7] and *Amarynth L.L.C. v. Counsel Corp.*[8] which held that the phrase "in respect of" is very broad, and should be given broad application. If the analysis required the court to look only at the wording of the preamble to 6.06 then Wireless would be correct. Courts have interpreted clauses broadly. That, however, is not the end of analysis.

[34] In looking at the parties' positions in the context of the overarching rationale set out in *Feldbaum,* I must consider not only whether the proposed application seeks a remedy common to all bondholders, but also whether the Indenture gives the Trustee the power to pursue that kind of suit. For example, in *Amarynth* Ground J. noted that in the trust indenture in that case, the trustee had the specific power to "institute proceedings necessary or advisable to protect the interests of the debentureholders." In *Casurina* the debenture provided that "all proceedings at law shall be instituted, had and maintained, by the Trustee, except only as herein provided."

[35] As I see it, the difficulty with Wireless' position is that in this Indenture, the Trustee's powers are contractually limited. Article 7 deals specifically with the Trustee and its duties and powers. First, Article 7.01 of the Indenture sets out the Trustee's duties. Section 7.01(a) says "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..."

[36] Section 7.01(b) goes on to say that except during the "continuance of an Event of Default, (1) the duties of the Trustee will be determined solely by the express provision of this Indenture and the Trustee need perform only those duties that are

[6] See *BCE Inc. v. 1976 Debentureholders* [2008] 3 S.C.R. 560. Oppression is fact specific. What is just and equitable is judged by the reasonable expectations of the stakeholders in the context of and in regard to the relationships at play. The court must look at both the reasonable expectations of the complainant, as well as whether those reasonable expectations have been violated by conduct that could be termed "oppressive" or with "unfair disregard" of a relevant interest.

[7] Note 4, above

[8] [2003] O.J. No. 4674 (S.C.J.)

specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee ..."

[37] So, what then are the Trustee's duties specifically set forth in the Indenture? Section 6.03 says "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 ... or to enforce the performance of any provision of the Notes or this Indenture ...."

[38] Section 6.08 refers to collection suits by the Trustee. The section authorizes the Trustee to recover judgment in its own name and as Trustee "If an Event of Default specified in Section 6.01(1) or (2) hereof occurs and is continuing."

[39] The specific Event of Default enumerated under section 6.01(1) is "default for 30 days in the payment when due of interest on the Notes". The Event of Default under 6.01(2) is "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."

[40] It seems to me that the no action clause must first be limited to those actions the Trustee is specifically authorized to take under the terms of the Indenture. As I read this Indenture, the Trustee's powers, duties and obligations as far as initiating action is concerned are limited to enforcing payment defaults. I do not see this Indenture as being nearly as broad as in *Amarynth*, or *Casurina*. As a result I do not see the Trustee under this Indenture as being authorized to initiate suit for oppression.

[41] But, Wireless argues, what is really at the heart of Catalyst's claim? It suggests it is grounded in "default" under the Indenture and as such falls within the powers of the Trustee to prosecute. The difficulty with this position is that the Trustee's powers are limited to acting against Events of Default (as that term is defined under the Indenture), and in particular only those Events of Default specified in Sections 6.01(1) and (2) of the Indenture. Neither of these Events of Default has occurred. Catalyst's complaint is based on neither of these specific Events of Default.

[42] In coming to this conclusion, I recognize that other cases have determined that default is not necessary to invoke the no action clause, and that no action clauses can be broad enough to encompass oppression applications. Here, however, the clause is sufficiently restrictive, when read in conjunction with the rest of the Indenture and particularly the Trustee's powers, to lead me to conclude it does not prohibit Catalyst from pursuing its application for relief from oppression.

[43] Since I have determined that the application is not barred by the no action clause in the Indenture, I need not deal with Catalyst's alternative argument that even if 6.06 applies, there are exceptions that would apply to permit Catalyst's application to go ahead in any case.

The decision:

[44] The motion is therefore dismissed. Counsel for Catalyst and Wireless agreed that as between them a reasonable costs award for the loser to pay on this motion would be in the range of $7,500 to $12,500. Wireless will therefore pay costs to Catalyst fixed at $8,500, all inclusive. The parties agreed that neither the Ad Hoc Committee nor the Trustee would have any entitlement to costs, or any obligation to pay costs.

[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.

MESBUR J.

Released: 20130411

H

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

David Moore
A Commissioner, etc.

Court File No. CV 13-10080-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 26TH DAY OF
	)	
JUSTICE WILTON-SIEGEL	)	APRIL, 2013

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC., AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

INTERIM ORDER
(Recapitalization Plan)

THIS MOTION made by the Applicant, 8440522 Canada Inc. (the "**Applicant**") for an interim order for advice and directions pursuant to section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Notice of Application and the affidavit of William E. Aziz sworn April 24, 2013, (the "**Aziz Affidavit**"), including the Plan of Arrangement (the "**Recapitalization Plan**"), which is attached as Schedule E to the draft notice of meeting and information circular (collectively, the "**Information Circular**"), which is attached as Exhibit A to the Aziz Affidavit and on hearing the submissions of counsel for the Applicant and the Initial Consenting Noteholders (as defined in the Recapitalization Plan) and on being advised that the Director appointed under the CBCA (the "**Director**") does not consider it necessary to appear,

Definitions

1. **THIS COURT ORDERS** that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Recapitalization Plan or otherwise as specifically defined herein.

The Meeting

2. **THIS COURT ORDERS** that Data & Audio-Visual Enterprises Holdings Inc. ("**Holdings**") is permitted to call, hold and conduct a meeting (the "**Meeting**") of the registered holders of 9.5% first lien senior secured notes (the "**First Lien Notes**") of Data & Audio-Visual Enterprises Wireless Inc. ("**Wireless**"), registered holders of 15% senior unsecured debentures (the "**Unsecured Senior Notes**") of Holdings, registered holders of unsecured convertible debentures of Holdings ranking pari passu with the Unsecured Senior Notes (the "**Unsecured Pari Passu Notes**") and registered holders of unsecured convertible debentures of Holdings ranking subordinate to the Unsecured Senior Notes and the Unsecured Pari Passu Notes (the "**Unsecured Subordinated Notes**"; and together with the Unsecured Senior Notes and the Unsecured Pari Passu Notes, collectively, the "**Unsecured Notes**"; and collectively the registered holders of the Unsecured Notes and the registered holders of the First Lien Notes, the "**Voting Securityholders**") to be held at the offices of Norton Rose Canada LLP, Royal Bank Plaza, South Tower, 200 Bay Street, Suite 3800, Toronto, Ontario, M5J 2Z4 on May 21, 2013 at 10:00 am to consider and, if determined advisable, pass, with or without variation, a resolution adopting and approving, with or without variation, the Recapitalization Plan (collectively, the "**Arrangement Resolution**").

3. **THIS COURT ORDERS** that the Meeting shall be called, held and conducted in accordance with the CBCA, the Recapitalization Plan, the Information Circular, and the articles and by-laws of the Applicant, subject to what may be provided hereafter and subject to any further order of this Court.

4. **THIS COURT ORDERS** that a member of the board of directors of Holdings, shall preside as the chair of the Meeting and, subject to this Order and any further order of the Court, shall decide all matters relating to the conduct of the Meeting.

5. **THIS COURT ORDERS** that the record date (the "**Record Date**") for determination of the Voting Securityholders entitled to notice of, and to vote at, the Meeting shall be April 25, 2013.

6. **THIS COURT ORDERS** that the only persons entitled to attend or speak at the Meeting shall be:

a) registered holders of the First Lien Notes as at the Record Date, or their proxyholders;

b) registered holders of the Unsecured Senior Notes as at the Record Date, or their proxyholders;

c) registered holders of the Unsecured Pari Passu Notes as at the Record Date, or their proxyholders;

d) registered holders of the Unsecured Subordinated Notes as at the Record Date, or their proxyholders;

e) legal counsel and advisors of any of the foregoing;

f) legal counsel to the Initial Consenting Noteholders;

g) legal counsel to the Supporting First Lien Noteholders;

h) the officers, directors, and legal counsel, of the Applicant, Holdings and Wireless;

i) the Unsecured Senior Notes Indenture Trustee and its legal counsel;

j) the First Lien Note Indenture Trustee and its legal counsel;

k) the Director; and

l) other persons who may receive the permission of the chair of the Meeting.

7. **THIS COURT ORDERS** that the Mobilicity Group may transact such other business at the Meeting as is contemplated in the Information Circular, or as may otherwise be properly before the Meeting.

Quorum

8. **THIS COURT ORDERS** that quorum at the Meeting shall be one registered holder of the First Lien Notes and two registered holders of any of the Unsecured Notes, present in person or by proxy at the opening of the Meeting who are entitled to vote at the Meeting.

Amendments to the Recapitalization Plan

9. **THIS COURT ORDERS** that the Applicant is authorized to make, subject to: (i) the prior consent of the Initial Consenting Noteholders (to the extent the amendment, restatement, modification or supplement described hereinafter may affect holders of the First Lien Notes, holders of the Unsecured Senior Notes, holders of the Existing Second Lien Notes, or the Backstop Parties); and (ii) paragraph 10 below, such amendments, restatements, modifications or supplements to the Recapitalization Plan as it may determine without any additional notice to the Voting Securityholders, or others entitled to receive notice under paragraphs 13 and 14 hereof, and the Recapitalization Plan, as so amended, modified, restated or supplemented shall be the Recapitalization Plan to be submitted to the Voting Securityholders at the Meeting and shall be the subject of the Arrangement Resolution. Amendments, modifications, restatements or supplements may be made following the

Meeting, but shall be subject to review and, if appropriate, further direction by this Court at the hearing for the final approval of the Recapitalization Plan.

10. **THIS COURT ORDERS** that, if any amendments, modifications or supplements to the Recapitalization Plan as referred to in paragraph 9, above, would, if disclosed, reasonably be expected to affect a Voting Securityholder's decision to vote for or against the Arrangement Resolution, notice of such amendment, modification or supplement shall be distributed by the Applicant to the Voting Securityholders by such method as the Applicant may determine is most practicable and expedient in the circumstances.

Amendments to the Information Circular

11. **THIS COURT ORDERS** that, subject to paragraph 16 below, the Applicant is authorized to make such amendments, revisions and/or supplements to the draft Information Circular as it may determine and the Information Circular, as so amended, revised and/or supplemented, shall be the Information Circular to be distributed in accordance with paragraphs 13 and 14.

Adjournments and Postponements

12. **THIS COURT ORDERS** that the Applicant, if it deems advisable, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Voting Securityholders respecting the adjournment or postponement, and notice of any such adjournment or postponement shall be given by the Applicant by such method as the Applicant may determine is most practicable and expedient in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

Notice of Meeting

13. **THIS COURT ORDERS** that, in order to effect notice of the Meeting, the Applicant shall send the Information Circular (including this Interim Order), the notice of the Meeting, the forms of proxy and an Election Form along with such amendments or additional documents as the Applicant may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the "**Meeting Materials**"), to the following:

a) the Voting Securityholders at the close of business on the Record Date, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by one or more of the following methods:

   i) by pre-paid ordinary or first class mail at the addresses of the Voting Securityholders as they appear on the books and records of Holdings, or its registrar and transfer agent, at the close of business on the Record Date and if no address is shown therein, then the last address of the person known to the corporate secretary of Holdings;

   ii) by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i) above; or

   iii) by facsimile or electronic transmission to any Voting Securityholder, who is identified to the satisfaction of the Applicant, who requests such transmission in writing and, if required by the Applicant, who is prepared to pay the charges for such transmission;

b) the Unsecured Senior Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting;

c) the First Lien Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the meeting; and

d) the respective directors and auditors of Holdings, Wireless, Leasing and the Applicant and to the Director appointed under the CBCA, by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or, with the consent of the person, by facsimile or electronic transmission, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting.

and that compliance with this paragraph shall constitute sufficient notice of the Meeting.

14. **THIS COURT ORDERS** that the Applicant is hereby directed to distribute the Notice of Application and the Information Circular (including this Interim Order), and any other communications or documents determined by the Applicant to be necessary or desirable (collectively, the "**Court Materials**") to the registered Existing Equity Holders of Holdings by any method permitted for notice to the Voting Securityholders as set forth in paragraph 13 above, concurrently with the distribution described in paragraph 13 of this Interim Order. Distribution to such persons shall be to their addresses as they appear on the books and records of Holdings at the close of business on the Record Date.

15. **THIS COURT ORDERS** that accidental failure or omission by the Applicant to give notice of the Meeting or to distribute the Meeting Materials or Court Materials to any person entitled by this Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of the Applicant, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Interim Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such

failure or omission is brought to the attention of the Applicant, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

16. **THIS COURT ORDERS** that the Applicant is hereby authorized to make, with the consent of the Initial Consenting Noteholders, such amendments, revisions or supplements to the Meeting Materials and Court Materials (subject to paragraphs 9 and 10 in the case of any amendments, revisions or supplements to the Recapitalization Plan), as the Applicant may determine in accordance with the terms of the Arrangement Agreement and the Recapitalization Plan ("**Additional Information**"), and that notice of such Additional Information may, subject to paragraph 10, above, be distributed by press release, newspaper advertisement, pre-paid ordinary mail, or by the method most reasonably practicable and expedient in the circumstances, as determined by the Applicant.

Service

17. **THIS COURT ORDERS** that distribution of the Meeting Materials and Court Materials pursuant to paragraphs 13 and 14 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 13 and 14 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 10, above.

Solicitation and Revocation of Proxies and Election Forms

18. **THIS COURT ORDERS** that Holdings and the Applicant are authorized to use the proxies and Election Forms substantially in the form of the drafts accompanying the Information Circular, with such amendments and additional information as Holdings and the

Applicant may determine are necessary or desirable, with the consent of the Initial Consenting Noteholders, subject to the terms of the Arrangement Agreement and the Recapitalization Plan. Holdings and the Applicant are authorized, at their expense, to solicit proxies and Election Forms, directly or through their officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as they may determine. Holdings or the Applicant may waive, with the consent of the Initial Consenting Noteholders the time limits set out in the Information Circular for the deposit or revocation of proxies by Voting Securityholders, or Election Forms by Eligible Investors, if Holdings or the Applicant deems it advisable to do so.

19. **THIS COURT ORDERS** that Voting Securityholders shall be entitled to revoke their proxies in accordance with section 148(4) of the CBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to s.148(4)(a)(i) of the CBCA: (a) may be deposited at the registered office of the Applicant or with the transfer agent of the Applicant as set out in the Information Circular; and (b) any such instruments must be received by the Applicant or its transfer agent not later than 5:00 p.m. two business days immediately preceding the Meeting (or any adjournment or postponement thereof).

Voting

20. **THIS COURT ORDERS** that the only persons entitled to vote in person or by proxy on the Arrangement Resolution, or such other business as may be properly brought before the Meeting, shall be registered holders as at the Record Date of:

i) the First Lien Notes (or their proxyholders);

ii) the Unsecured Senior Notes (or their proxyholders);

iii) the Unsecured Pari Passu Notes (or their proxyholders); and

iv) the Unsecured Subordinated Notes (or their proxyholders).

Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast. Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution.

21. **THIS COURT ORDERS** that votes shall be taken at the Meeting on the basis of one vote for each dollar of Voting Claim of the First Lien Notes, Unsecured Senior Notes, Unsecured Pari Passu Notes or Unsecured Subordinated Notes, calculated using the principal amount plus accrued and unpaid interest showing on the records of Holdings or Wireless, as applicable, as at the Record Date on each First Lien Note, Unsecured Senior Note, Unsecured Pari Passu Note and Unsecured Subordinated Note, respectively, and that, unless otherwise ordered by this Court, the Arrangement Resolution can only be passed, with or without variation by:

a) the registered holders of the First Lien Notes, who collectively represent at least two-thirds in value of the Voting Claims of all First Lien Noteholders who actually vote on the Arrangement (in person or by proxy) at the Meeting; and

b) the registered holders of the Unsecured Notes who collectively represent at least two-thirds in value of the Voting Claims of all Unsecured Noteholders who actually vote (in person or by proxy) at the Meeting.

Such votes shall be sufficient, but not necessary unless otherwise ordered by this Court, to authorize the Applicant to do all such acts and things as may be necessary or desirable to give effect to the Recapitalization Plan on a basis consistent with what is provided for in the Information Circular without the necessity of any further approval by the Voting

Securityholders, subject only to final approval of the Recapitalization Plan by this Honourable Court.

22. **THIS COURT ORDERS** that, for purposes of determining whether or not the Recapitalization Plan has received the affirmative vote of the Required Majority of the Unsecured Noteholder Class and the First Lien Noteholder Class, the tabulation agent for the Creditor's Meeting will separately record the vote of each Voting Securityholder and in respect of the Unsecured Noteholder Class shall first record the vote of the Unsecured Senior Noteholders, then the votes of the Unsecured Pari Passu Noteholders, and then the votes of the Unsecured Subordinated Noteholders..

23. **THIS COURT ORDERS** that regardless of whether or not the Arrangement Resolution is approved by the Required Majority of First Lien Noteholders, Wireless and the First Lien Indenture Trustee may, with the consent of the Supporting First Lien Noteholders, apply the votes taken in respect of the First Lien Notes at the Meeting to any amendment of the First Lien Indenture that is consistent with the matters contained in the First Lien Supplemental Indenture, provided that any such amendment is conducted pursuant to and in accordance with the amendment provisions of the First Lien Indenture.

Early Consent Deadline and Election Date.

24. **THIS COURT ORDERS** that the Early Consent Deadline shall be May 14, 2013 (or such later date as the Applicant, Holdings and the Initial Consenting Noteholders may agree).

25. **THIS COURT ORDERS** that the Election Date shall be May 14, 2013 (or such later date as the Applicant, Holdings and the Initial Consenting Noteholders may agree).

26. **THIS COURT ORDERS** that compliance with the notice requirement of paragraphs 13 and 14 shall constitute sufficient notice of the Early Consent Deadline and the Election Date.

Alternative CCAA Recapitalization Plan

27. **THIS COURT ORDERS** that, pursuant to a further order of this Court, votes cast at the Meeting in respect of the Recapitalization Plan may count as votes cast in respect of an Alternative CCAA Plan, on the terms and conditions set forth in the Recapitalization Plan.

Hearing of Application for Approval of the Recapitalization Plan

28. **THIS COURT ORDERS** that following the Meeting, and in accordance with the terms of the arrangement agreement among the members of the Mobilicity Group attached as Schedule D to the Information Circular, the Applicant may, but shall not be required to, apply to this Court for final approval of the Recapitalization Plan on a date to be determined by the Applicant and this Court.

29. **THIS COURT ORDERS** that distribution of the Notice of Application and the Information Circular (including the Interim Order), when sent in accordance with paragraphs 13 and 14 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 30.

30. **THIS COURT ORDERS** that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for the Applicant as soon as reasonably practicable, and, in any event, no less than five (5) days before the date set by the Court for the hearing of this Application at the following addresses:

NORTON ROSE CANADA LLP
TD Waterhouse Tower
Suite 2300
Toronto-Dominion Centre
79 Wellington Street West
P.O. Box 128
Toronto, Ontario M5K 1H1

Attention: Orestes Pasparakis and Marc Kestenberg

31. **THIS COURT ORDERS** that, subject to further order of this Court, the only persons entitled to appear and be heard at the hearing of the within Application shall be:

i) the members of the Mobilicity Group;

ii) the Director;

iii) legal counsel to the Initial Consenting Noteholders; and

iv) any person who has filed and served a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the *Rules of Civil Procedure.*

32. **THIS COURT ORDERS** that any materials to be filed by the Mobilicity Group in support of the within Application for final approval of the Recapitalization Plan may be filed up to one day prior to the hearing of the Application without further order of this Court.

33. **THIS COURT ORDERS** that in the event the within Application for final approval does not proceed on the date set by the Court for the hearing of this Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 30 shall be entitled to be given notice of the adjourned date.

No Right to Declare Default

34. **THIS COURT ORDERS that**, (1) unless leave of this Court is granted on five days' notice to the Applicant, from 12:01 am on the date of this Interim Order until and including the earlier of June 30, 2013 and the Effective Date: no holder of the First Lien Notes, Existing Second Lien Notes, the Unsecured Senior Notes, the Unsecured Pari Passu Notes or the Unsecured Subordinated Notes, nor any of the following material suppliers to the Mobilicity Group: Ericsson Canada Inc.; Ingram Micro Inc., AMDOCS Canadian Managed Services, Inc.,

and Research In Motion Limited, as well as their affiliates, successors and permitted assigns (each a "**Material Supplier**") shall have any rights to terminate, accelerate, amend or declare in default any contract, agreement, instrument or other document to which any member of the Mobilicity Group are a party due to any member of the Mobilicity Group being a party to this proceeding or having made an application to this Court pursuant to section 192 of the CBCA or taking any steps in furtherance thereof; and (2) on consent of the holders of the Existing Second Lien Notes, all holders of the Existing Second Lien Notes are hereby stayed from enforcing the payment or security in respect of the Existing Second Lien Notes.

35. **THIS COURT ORDERS** that the Mobilicity Group shall provide a copy of this Interim Order to each Material Supplier within 5 business days of the date of this Interim Order.

Precedence

36. **THIS COURT ORDERS** that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the First Lien Notes, Unsecured Senior Notes, the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes, or the articles or by-laws or any shareholders agreement of any member of the Mobilicity Group, this Interim Order shall govern. For greater certainty nothing in this Order shall affect the substantive rights of any First Lien Noteholder.

Extra-Territorial Assistance

37. **THIS COURT** seeks and requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Court in carrying out the terms of this Interim Order.

Variance

38. **THIS COURT ORDERS** that the Applicant shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Court may direct.

39. **THIS COURT ORDERS** that the requirement for service of the Notice of Motion is hereby dispensed with.

General

40. **THIS COURT ORDERS** that any interested party (including the Applicant) may apply to this Court to vary or amend this Order (a) on not less than four (4) days notice to the Applicant, counsel to the Initial Consenting Noteholders and any other party or parties likely to be affected by the Order sought; and (b) within seven (7) days of the distribution of the Meeting Materials as set out in Paragraphs 13 and 14, or upon such other notice, if any, as this Court may order.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 2 6 2013

W. Hou-Lul J.

Court File No: CV-13-10080-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

8440522 CANADA INC.
Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(*COMMERCIAL LIST*)

Proceeding commenced at Toronto

INTERIM ORDER
(Recapitalization Plan)

NORTON ROSE CANADA LLP
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Toronto-Dominion Centre
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Lawyers for the Applicant
8440522 Canada Inc.

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Court File No. CV13-10081-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 26TH DAY OF
	)	
JUSTICE WILTON-SIEGEL	)	APRIL, 2013

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC., AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

INTERIM ORDER
(Acquisition Plan)

THIS MOTION made by the Applicant, 8440522 Canada Inc. (the "**Applicant**") for an interim order for advice and directions pursuant to section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Notice of Application and the affidavit of William E. Aziz sworn April 24, 2013, (the "**Aziz Affidavit**"), including the Plan of Arrangement (the "**Acquisition Plan**"), which is attached as Schedule C to the draft notice of meeting and information circular (collectively, the "**Information Circular**"), which is attached as Exhibit B to the Aziz Affidavit and on hearing the submissions of counsel for the Applicant and the Initial Consenting Noteholders (as defined in the Acquisition Plan) and on being advised that the Director appointed under the CBCA (the "**Director**") does not consider it necessary to appear,

Definitions

1. **THIS COURT ORDERS** that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Acquisition Plan or otherwise as specifically defined herein.

The Meeting

2. **THIS COURT ORDERS** that Data & Audio-Visual Enterprises Holdings Inc. ("**Holdings**") is permitted to call, hold and conduct a meeting (the "**Meeting**") of the registered holders of 9.5% first lien senior secured notes (the "**First Lien Notes**") of Data & Audio-Visual Enterprises Wireless Inc. ("**Wireless**"), registered holders of 15% senior unsecured debentures (the "**Unsecured Senior Notes**") of Holdings, registered holders of unsecured convertible debentures of Holdings ranking pari passu with the Unsecured Senior Notes (the "**Unsecured Pari Passu Notes**") and registered holders of unsecured convertible debentures of Holdings ranking subordinate to the Unsecured Senior Notes and the Unsecured Pari Passu Notes (the "**Unsecured Subordinated Notes**"; and together with the Unsecured Senior Notes and the Unsecured Pari Passu Notes, collectively, the "**Unsecured Notes**"; and collectively the registered holders of the Unsecured Notes and the registered holders of the First Lien Notes, the "**Voting Securityholders**") to be held at the offices of Norton Rose Canada LLP, Royal Bank Plaza, South Tower, 200 Bay Street, Suite 3800, Toronto, Ontario, M5J 2Z4 on May 21, 2013 at 10:30 a.m. to consider and, if determined advisable, pass, with or without variation, a resolution adopting and approving, with or without variation, the Acquisition Plan (collectively, the "**Arrangement Resolution**").

3. **THIS COURT ORDERS** that the Meeting shall be called, held and conducted in accordance with the CBCA, the Acquisition Plan, the Information Circular, and the articles and. by-laws of the Applicant, subject to what may be provided hereafter and subject to any further order of this Court.

4. **THIS COURT ORDERS** that a member of the board of directors of Holdings, shall preside as the chair of the Meeting and, subject to this Order and any further order of the Court, shall decide all matters relating to the conduct of the Meeting.

5. **THIS COURT ORDERS** that the record date (the "**Record Date**") for determination of the Voting Securityholders entitled to notice of, and to vote at, the Meeting shall be April 25, 2013.

6. **THIS COURT ORDERS** that the only persons entitled to attend or speak at the Meeting shall be:

a) registered holders of the First Lien Notes as at the Record Date, or their proxyholders;

b) registered holders of the Unsecured Senior Notes as at the Record Date, or their proxyholders;

c) registered holders of the Unsecured Pari Passu Notes as at the Record Date, or their proxyholders;

d) registered holders of the Unsecured Subordinated Notes as at the Record Date, or their proxyholders;

e) legal counsel and advisors of any of the foregoing;

f) legal counsel to the Initial Consenting Noteholders;

g) legal counsel to the Supporting First Lien Noteholders;

h) the officers, directors, and legal counsel, of the Applicant, Holdings and Wireless;

i) the Unsecured Senior Notes Indenture Trustee and its legal counsel;

j) the First Lien Note Indenture Trustee and its legal counsel;

k) the Director; and

l) other persons who may receive the permission of the chair of the Meeting.

7. **THIS COURT ORDERS** that the Mobilicity Group may transact such other business at the Meeting as is contemplated in the Information Circular, or as may otherwise be properly before the Meeting.

Quorum

8. **THIS COURT ORDERS** that quorum at the Meeting shall be one registered holder of the First Lien Notes and two registered holders of any of the Unsecured Notes, present in person or by proxy at the opening of the Meeting who are entitled to vote at the Meeting.

Amendments to the Acquisition Plan

9. **THIS COURT ORDERS** that the Applicant is authorized to make, subject to: (i) the prior consent of the Requisite Majority of the Initial Consenting Noteholders (to the extent the amendment, restatement, modification or supplement described hereinafter may affect holders of the First Lien Notes, holders of the Unsecured Senior Notes, or the holders of the Existing Second Lien Notes); and (ii) paragraph 10 below, such amendments, restatements, modifications or supplements to the Acquisition Plan as it may determine without any additional notice to the Voting Securityholders, or others entitled to receive notice under paragraphs 13 and 14 hereof, and the Acquisition Plan, as so amended, modified, restated or supplemented shall be the Acquisition Plan to be submitted to the Voting Securityholders at the Meeting and shall be the subject of the Arrangement Resolution. Amendments, modifications, restatements or supplements may be made following the Meeting, but shall be

subject to review and, if appropriate, further direction by this Court at the hearing for the final approval of the Acquisition Plan.

10. **THIS COURT ORDERS** that, if any amendments, modifications or supplements to the Acquisition Plan as referred to in paragraph 9, above, would, if disclosed, reasonably be expected to affect a Voting Securityholder's decision to vote for or against the Arrangement Resolution, notice of such amendment, modification or supplement shall be distributed by the Applicant to the Voting Securityholders by such method as the Applicant may determine is most practicable and expedient in the circumstances.

Amendments to the Information Circular

11. **THIS COURT ORDERS** that, subject to paragraph 16 below, the Applicant is authorized to make such amendments, revisions and/or supplements to the draft Information Circular as it may determine and the Information Circular, as so amended, revised and/or supplemented, shall be the Information Circular to be distributed in accordance with paragraphs 13 and 14.

Adjournments and Postponements

12. **THIS COURT ORDERS** that the Applicant, if it deems advisable, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Voting Securityholders respecting the adjournment or postponement, and notice of any such adjournment or postponement shall be given by the Applicant by such method as the Applicant may determine is most practicable and expedient in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

Notice of Meeting

13. **THIS COURT ORDERS** that, in order to effect notice of the Meeting, the Applicant shall send the Information Circular (including this Interim Order), the notice of the Meeting and the forms of proxy, along with such amendments or additional documents as the Applicant may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the "**Meeting Materials**"), to the following:

a) the Voting Securityholders at the close of business on the Record Date, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by one or more of the following methods:

   i) by pre-paid ordinary or first class mail at the addresses of the Voting Securityholders as they appear on the books and records of Holdings, or its registrar and transfer agent, at the close of business on the Record Date and if no address is shown therein, then the last address of the person known to the corporate secretary of Holdings;

   ii) by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i) above; or

   iii) by facsimile or electronic transmission to any Voting Securityholder, who is identified to the satisfaction of the Applicant, who requests such transmission in writing and, if required by the Applicant, who is prepared to pay the charges for such transmission;

b) the Unsecured Senior Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting;

c) the First Lien Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the meeting; and

d) the respective directors and auditors of Holdings, Wireless, Leasing and the Applicant and to the Director appointed under the CBCA, by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or, with the consent of the person, by facsimile or electronic transmission, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting,

and that compliance with this paragraph shall constitute sufficient notice of the Meeting.

14. **THIS COURT ORDERS** that the Applicant is hereby directed to distribute the Notice of Application and the Information Circular (including this Interim Order), and any other communications or documents determined by the Applicant to be necessary or desirable (collectively, the "**Court Materials**") to the registered Existing Equity Holders of Holdings by any method permitted for notice to the Voting Securityholders as set forth in paragraph 13 above, concurrently with the distribution described in paragraph 13 of this Interim Order. Distribution to such persons shall be to their addresses as they appear on the books and records of Holdings at the close of business on the Record Date.

15. **THIS COURT ORDERS** that accidental failure or omission by the Applicant to give notice of the Meeting or to distribute the Meeting Materials or Court Materials to any person entitled by this Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of the Applicant, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Interim Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such

failure or omission is brought to the attention of the Applicant, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

16. **THIS COURT ORDERS** that the Applicant is hereby authorized to make, with the consent of the Requisite Majority of the Initial Consenting Noteholders, such amendments, revisions or supplements to the Meeting Materials and Court Materials (subject to paragraphs 9 and 10 in the case of any amendments, revisions or supplements to the Acquisition Plan), as the Applicant may determine in accordance with the terms of the Arrangement Agreement and the Acquisition Plan ("**Additional Information**"), and that notice of such Additional Information may, subject to paragraph 10, above, be distributed by press release, newspaper advertisement, pre-paid ordinary mail, or by the method most reasonably practicable and expedient in the circumstances, as determined by the Applicant.

Service

17. **THIS COURT ORDERS** that distribution of the Meeting Materials and Court Materials pursuant to paragraphs 13 and 14 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 13 and 14 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 10, above.

Solicitation and Revocation of Proxies

18. **THIS COURT ORDERS** that Holdings and the Applicant are authorized to use the proxies substantially in the form of the drafts accompanying the Information Circular, with such amendments and additional information as Holdings and the Applicant may determine are

necessary or desirable, with the consent of the Requisite Majority of the Initial Consenting Noteholders, subject to the terms of the Arrangement Agreement and the Acquisition Plan. Holdings and the Applicant are authorized, at their expense, to solicit proxies, directly or through their officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as they may determine. Holdings or the Applicant may waive, with the consent of the Requisite Majority of the Initial Consenting Noteholders, the time limits set out in the Information Circular for the deposit or revocation of proxies by Voting Securityholders, if Holdings or the Applicant deems it advisable to do so.

19. **THIS COURT ORDERS** that Voting Securityholders shall be entitled to revoke their proxies in accordance with section 148(4) of the CBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to s.148(4)(a)(i) of the CBCA: (a) may be deposited at the registered office of the Applicant or with the transfer agent of the Applicant as set out in the Information Circular; and (b) any such instruments must be received by the Applicant or its transfer agent not later than 5:00 p.m. two business days immediately preceding the Meeting (or any adjournment or postponement thereof).

Voting

20. **THIS COURT ORDERS** that the only persons entitled to vote in person or by proxy on the Arrangement Resolution, or such other business as may be properly brought before the Meeting, shall be registered holders as at the Record Date of:

i) the First Lien Notes (or their proxyholders);

ii) the Unsecured Senior Notes (or their proxyholders);

iii) the Unsecured Pari Passu Notes (or their proxyholders); and

iv) the Unsecured Subordinated Notes (or their proxyholders).

Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast. Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution.

21. **THIS COURT ORDERS** that votes shall be taken at the Meeting on the basis of one vote for each dollar of Voting Claim of the First Lien Notes, Unsecured Senior Notes, Unsecured Pari Passu Notes or Unsecured Subordinated Notes, calculated using the principal amount plus accrued and unpaid interest showing on the records of Holdings or Wireless, as applicable, as at the Record Date on each First Lien Note, Unsecured Senior Note, Unsecured Pari Passu Note and Unsecured Subordinated Note, respectively, and that, unless otherwise ordered by this Court, the Arrangement Resolution can only be passed, with or without variation by:

a) the registered holders of the First Lien Notes, who collectively represent at least two-thirds in value of the Voting Claims of all First Lien Noteholders who actually vote on the Arrangement (in person or by proxy) at the Meeting; and

b) the registered holders of the Unsecured Notes who collectively represent at least two-thirds in value of the Voting Claims of all Unsecured Noteholders who actually vote (in person or by proxy) at the Meeting.

Such votes shall be sufficient, but not necessary unless otherwise ordered by this Court, to authorize the Applicant to do all such acts and things as may be necessary or desirable to give effect to the Acquisition Plan on a basis consistent with what is provided for in the Information

Circular without the necessity of any further approval by the Voting Securityholders, subject only to final approval of the Acquisition Plan by this Honourable Court.

22. **THIS COURT ORDERS** that, for purposes of determining whether or not the Acquisition Plan has received the affirmative vote of the Required Majority of the Unsecured Noteholder Class and the First Lien Noteholder Class, the tabulation agent for the Creditor's Meeting will separately record the vote of each Voting Securityholder and in respect of the Unsecured Noteholder Class shall first record the vote of the Unsecured Senior Noteholders, then the votes of the Unsecured Pari Passu Noteholders, and then the votes of the Unsecured Subordinated Noteholders.

23. **THIS COURT ORDERS** that, notwithstanding any provision of this Interim Order, to the extent that the Applicant exercises the Senior Noteholder Payment Election (as defined below), the First Lien Noteholders shall be treated as Unaffected Creditors for all purposes under the Acquisition Plan and any votes cast by the First Lien Noteholders at the Creditor's Meeting shall be disregarded.

Senior Noteholder Payment Election

24. **THIS COURT ORDERS** that, from and after the date of this Interim Order, the Applicant shall, with the consent of the Requisite Majority of the Initial Consenting Noteholders, be authorized to elect (the "**Senior Noteholder Payment Election**") to: (1) repay in full all Indebtedness (as defined in the First Lien Indenture) owing to the First Lien Noteholders at the time of such repayment in an amount to be determined by the First Lien Note Indenture Trustee (a "**First Lien Repayment**") or (2) repay in full all principal and accrued interest (under section 2.01 of the First Lien Indenture) owing under the First Lien Notes at the time of such repayment (a "**First Lien Payment**") and pay into escrow for the sole benefit of the First Lien Noteholders (subject only to any rights or liens of the First Lien Note

Indenture Trustee pursuant to the First Lien Note Indenture or otherwise) any additional amounts, fees or premiums or other Indebtedness that may be claimed to be owing to the First Lien Noteholders at the time of such repayment (the "**Holdback Amount**" and, together with the First Lien Payment, a "**First Lien Payment & Escrow**"). Any such First Lien Repayment or First Lien Payment & Escrow shall be made in consideration for the complete satisfaction, release and discharge of all Indebtedness owing to the First Lien Noteholders pursuant to the First Lien Notes and any and all security granted in favour of the First Lien Noteholders as security for the Indebtedness, with such satisfaction, release and discharge becoming effective upon any such First Lien Repayment or First Lien Payment & Escrow being made. Following any First Lien Payment & Escrow, the final amount to be paid to First Lien Noteholders from the Holdback Amount (if any) shall be determined by the Court or by agreement of the Applicant, the Initial Consenting Noteholders and any First Lien Noteholder with respect to its pro rata share of the Holdback Amount. Any remaining amount of the Holdback Amount, after payments (if any) have been made in respect of any or all First Lien Noteholders (whether by Court order or agreement as above) shall be distributed in accordance with the terms of the Acquisition Plan or as otherwise ordered by this Court.

Early Consent Deadline

25. **THIS COURT ORDERS** that the Early Consent Deadline shall be the date that is five days after the Purchase Price Notice Date (or such other date as the Applicant, Holdings and the Requisite Majority of the Initial Consenting Noteholders may agree).

26. **THIS COURT ORDERS** that compliance with the notice requirement of paragraphs 13 and 14 shall constitute sufficient notice of the Early Consent Deadline.

Alternative CCAA Acquisition Plan

27. **THIS COURT ORDERS** that, pursuant to a further order of this Court, votes cast at the Meeting in respect of the Acquisition Plan may count as votes cast in respect of an Alternative CCAA Plan, on the terms and conditions set forth in the Acquisition Plan.

Hearing of Application for Approval of the Acquisition Plan

28. **THIS COURT ORDERS** that following the Meeting, and in accordance with the terms of any Arrangement Agreement, the Applicant may, but shall not be required to, apply to this Court for final approval of the Acquisition Plan on a date to be determined by the Applicant and this Court (the "**Final Hearing Date**").

29. **THIS COURT ORDERS** that distribution of the Notice of Application and the Information Circular (including the Interim Order), when sent in accordance with paragraphs 13 and 14 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 30.

30. **THIS COURT ORDERS** that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for the Applicant as soon as reasonably practicable, and, in any event, no less than five (5) days before the date set by the Court for the hearing of this Application at the following addresses:

NORTON ROSE CANADA LLP
TD South Tower
Suite 2300
Toronto-Dominion Centre
79 Wellington Street West
P.O. Box 128
Toronto, Ontario M5K 1H1

Attention: Orestes Pasparakis and Marc Kestenberg

31. **THIS COURT ORDERS** that, subject to further order of this Court, the only persons entitled to appear and be heard at the hearing of the within Application shall be:

i) the members of the Mobilicity Group;

ii) the Director;

iii) legal counsel to the Initial Consenting Noteholders; and

iv) any person who has filed and served a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the *Rules of Civil Procedure*.

32. **THIS COURT ORDERS** that any materials to be filed by the Mobilicity Group in support of the within Application for final approval of the Acquisition Plan may be filed up to one day prior to the hearing of the Application without further order of this Court.

33. **THIS COURT ORDERS** that in the event the within Application for final approval does not proceed on the date set by the Court for the hearing of this Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 30 shall be entitled to be given notice of the adjourned date.

No Right to Declare Default

34. **THIS COURT ORDERS that,** (1) unless leave of this Court is granted on five days' notice to the Applicant, from 12:01 am on the date of this Interim Order until and including the earlier of June 30, 2013 and the Effective Date: no holder of the First Lien Notes, Existing Second Lien Notes, the Unsecured Senior Notes, the Unsecured Pari Passu Notes or the Unsecured Subordinated Notes, nor any of the following material suppliers to the Mobilicity Group: Ericsson Canada Inc.; Ingram Micro Inc., AMDOCS Canadian Managed Services, Inc.,

and Research In Motion Limited, as well as their affiliates, successors and permitted assigns (each a "**Material Supplier**") shall have any rights to terminate, accelerate, amend or declare in default any contract, agreement, instrument or other document to which any member of the Mobilicity Group are a party due to any member of the Mobilicity Group being a party to this proceeding or having made an application to this Court pursuant to section 192 of the CBCA or taking any steps in furtherance thereof; and (2) on consent of the holders of the Existing Second Lien Notes, all holders of the Existing Second Lien Notes are hereby stayed from enforcing the payment or security in respect of the Existing Second Lien Notes.

35. **THIS COURT ORDERS** that the Mobilicity Group shall provide a copy of this Interim Order to each Material Supplier within 5 business days of the date of this Interim Order.

Precedence

36. **THIS COURT ORDERS** that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the First Lien Notes, Unsecured Senior Notes, the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes, or the articles or by-laws or any shareholders agreement of any member of the Mobilicity Group, this Interim Order shall govern. For greater certainty nothing in this Order shall affect the substantive rights of any First Lien Noteholder.

Extra-Territorial Assistance

37. **THIS COURT** seeks and requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Court in carrying out the terms of this Interim Order.

Variance

38. **THIS COURT ORDERS** that the Applicant shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Court may direct.

39. **THIS COURT ORDERS** that the requirement for service of the Notice of Motion is hereby dispensed with.

General

40. **THIS COURT ORDERS** that any interested party (including the Applicant) may apply to this Court to vary or amend this Order (a) on not less than four (4) days notice to the Applicant, counsel to the Initial Consenting Noteholders and any other party or parties likely to be affected by the Order sought; and (b) within seven (7) days of the distribution of the Meeting Materials as set out in Paragraphs 13 and 14, or upon such other notice, if any, as this Court may order.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

APR 2 6 2013

W. Hon-Lul J.

Court File No: CV13-10081-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

8440522 CANADA INC.
Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(*COMMERCIAL LIST*)

Proceeding commenced at Toronto

INTERIM ORDER
(Acquisition Plan)

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Lawyers for the Applicant
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E:\For printing\DOCSTOR-#2692586-v1-Alternative_Acquisition_Interim_Order2.DOC

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

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

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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.

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MARKED PURSUANT TO RULE 4.06(3)(b) OF THE *RULES OF CIVIL PROCEDURE*
(Sworn October 9, 2013)
(Motion Returnable October 17, 2013)
VOLUME 2

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

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

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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

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)

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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
	VOLUME 2			
"I"	Reasons for Decision of His Honour Judge Wilton-Seigel with respect to the CBCA proceedings dated May 1, 2013	12(e)	9	350
"J"	Affidavit of James Riley sworn on May 27, 2013 (without exhibits)	13	10	368
"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
"M"	Email from Jon Levin to Walied Solimon, dated June 6, 2013, enclosing signed letter by Catalyst and two proposals for financing	18	13	449
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I

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

David Moore

A Commissioner, etc.

SUPERIOR COURT OF JUSTICE

Judges' Administration
361 University Avenue
Toronto, ON M5G 1T3
Tel: (416) 327-5284

Fax

To:	Mr. Orestes Pasparakis	**Fax:**	416-216-1995
To:	Mr. Robert J. Chadwick	**Fax:**	416-979-1234
To:	Mr. David C. Moore	**Fax:**	416-581-1279
To:	Ms. Janice L. Wright	**Fax:**	416-869-3411
Re:	Catalyst	**Date:**	May 1, 2013

Pages: 17

Attached please find the decision of Justice Wilton-Siegel in the above-noted matter. Please note that Schedules "A" and "B" referred to in paragraph 74 are not yet attached. They will be sent tomorrow.

If you do not receive all pages, please call 416-327-5284 and ask to speak to Michele Livingston.

CITATION: 8440522 Canada Inc. (Re), 2013 ONSC 2509
COURT FILE NO.: CV-13-10080-00CL
COURT FILE NO.: CV-13-10081-00CL
DATE: 2013-05-01

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC. AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

BEFORE: Mr. Justice H.J. Wilton-Siegel J.

COUNSEL: *Orestes Pasparakis* and *Marc Kestenberg*, for the Applicant 8440522 Canada Inc.

Robert J. Chadwick, *Fred Myers* and *Brendan O'Neill*, for the Ad Hoc Committee of Noteholders

David C. Moore and *K. Jones*, for The Catalyst Capital Group Inc.

Janice Wright, for Equity Financial Trust Co.

HEARD: April 26, 2013

ENDORSEMENT

[1] The Applicant, 8440522 Canada Inc. (the "Applicant"), moves in separate applications pursuant to section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "CBCA") for two interim orders with respect to two plans of arrangement (the "Plans of Arrangement") involving Data & Audio-Visual Enterprises Holdings Inc. ("Holdings"), Data & Audio-Visual Enterprises Wireless Inc. ("Wireless") and Data & Audio-Visual Enterprises Leasing Inc. ("Leasing", and collectively with the Applicant, the "Mobilicity Group" or "Mobilicity").

[2] On April 26, 2013, I granted the two interim orders sought, subject to certain modifications described below (as so amended, the "Interim Orders"), indicating that written reasons would follow shortly. These are the reasons for that decision.

Background

The Parties

[3] The Mobilicity Group is a Canadian wireless carrier which provides wireless telecommunication services in Toronto, Ottawa, Calgary, Edmonton and Vancouver. In addition to voice, text, data and long distance cellular services, the Mobilicity Group offers hardware handsets and accessories to its customers. The corporate structure of the Mobilicity Group is as follows.

[4] Holdings is a private corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA"). The shareholding interest in Wireless described below constitutes its sole asset.

[5] Wireless is a private corporation incorporated under the CBCA. Wireless is wholly-owned by Holdings and is the operating entity of the Mobilicity Group.

[6] The Applicant is a private corporation incorporated under the CBCA and is wholly-owned by Wireless.

[7] Leasing is a private corporation incorporated under the CBCA that is wholly-owned by Wireless. It holds the Mobilicity Group's network assets and has no active operations.

The Capital Structure of the Mobilicity Group

[8] The relevant features of the capital structure of the Mobilicity Group are as follows.

Equity

[9] The authorized capital of Holdings consists of: (1) common shares, of which 3,330,141 common shares are held by Data & Audio-Visual Enterprises Investments Inc. ("Investments") and 1,655,070 common shares are held by QCP CW S.A.R.L. ("Quadrangle"); and (2) non-voting Class B shares, convertible into common shares on a one-for-one basis, of which 20,204,790 shares are outstanding and held by Quadrangle. As a result, Investments holds approximately 13.2% of the equity and 66.7% of the voting interest in Holdings, and Quadrangle holds approximately 86.8% of the equity and 33.3% of the voting interest in Holdings.

Debt

Holdings

[10] Holdings has issued unsecured senior notes in the aggregate principal amount of $95 million (the "Unsecured Senior Notes"). The Unsecured Senior Notes were issued pursuant to a trust indenture dated April 29, 2011, and mature on September 25, 2018. Interest is capitalized under the terms of the Unsecured Senior Notes. At the date hereof, the aggregate amount outstanding is approximately $147.2 million.

[11] Holdings has also issued unsecured pari passu notes (the "Unsecured Pari Passu Notes") and unsecured subordinated notes (the "Unsecured Subordinated Notes"), of which the aggregate principal amount outstanding at March 31, 2013 was approximately $85.1 million and approximately $37.2 million, respectively. The Unsecured Pari Passu Notes and the Unsecured Subordinated Notes (collectively, the "Convertible Notes") are held by Quadrangle. The Unsecured Senior Notes and the Convertible Notes are herein collectively referred to as the "Unsecured Debt" and the holders of the First Lien Notes and the holders of the Unsecured Debt are collectively referred to as the "Voting Securityholders".

Wireless

[12] Wireless has issued 9.5% first lien senior secured notes in the aggregate principal amount of $195 million (the "First Lien Notes"). The First Lien Notes were issued pursuant to a trust indenture dated April 29, 2011 (the "First Lien Note Trust Indenture") and mature on April 29, 2018. The First Lien Notes are guaranteed by Holdings and Leasing. To secure the First Lien Notes, each of Wireless, Holdings and Leasing have entered into general security agreements respecting their assets in favour of the trustee under the First Lien Note Trust Indenture.

[13] Wireless has also authorized the issuance of 15.5% senior secured notes in the aggregate amount of $43.25 million (the "Second Lien Notes"), of which the principal amount of $33.25 million of Second Lien Notes are currently outstanding. The Second Lien Notes were issued pursuant to a note purchase, guarantee and back-stop agreement dated February 6, 2013 (the "Note Purchase Agreement"), which contemplated the issue of the Second Lien Notes in three tranches up to a total of $35 million and the payment of a funding fee, in the amount of $8.25 million, to be satisfied by the issue of additional Second Lien Notes at the time of the issue of the first tranche. It is expected that Mobilicity will draw down the third and final tranche prior to the proposed meetings of the Voting Securityholders (as defined below). The Second Lien Notes mature on May 30, 2013. The Second Lien Notes are secured by a second-priority lien on the assets of Mobilicity Group, and are expressed to be subordinated and postponed to payment of the First Lien Notes.

[14] The Second Lien Notes were issued to a subset of the holders of the First Lien Notes and the Unsecured Senior Notes. Pursuant to the Note Purchase Agreement, the holders of the Second Lien Notes agreed to backstop a further debt offering of new second lien notes (the "New Second Lien Notes") in the aggregate principal amount of $75 million in connection with the Recapitalization Plan (described below), if it proceeds, which financing would be used to pay out the Second Lien Notes (which mature on May 30, 2013) and provide further funds to be used for corporate purposes (the "Backstop Financing").

<u>The Proposed Plans of Arrangement</u>

[15] A novel feature of the relief sought on these applications is that the Applicant seeks approval at proposed meetings of the Voting Securityholders of two possible plans of arrangement – a plan of arrangement based on an agreement with a third party for the acquisition of the Mobilicity Group referred to as the "Acquisition Plan", and a plan for the recapitalization of the Mobilicity Group based on a $75 million financing, which is supported by the Backstop Financing, referred to as the "Recapitalization Plan" (collectively, the "Plans" or the "Plans of

Arrangement"). These Plans are mutually exclusive, but are being pursued in parallel at the present time. The decision regarding which Plan will proceed will depend upon whether an agreement is reached with a third party for the acquisition of the Mobilicity Group prior to the meeting of the Voting Securityholders. The following is a brief summary of the salient provisions of the two Plans.

The Acquisition Plan

[16] The Acquisition Plan contemplates the repayment of the outstanding First Lien Notes and the Second Lien Notes. Any remaining proceeds after the above payments are made would be distributed to holders of the Unsecured Debt in satisfaction of their claims in accordance with their priorities, subject to payment of $7 million to the holders of the Second Lien Notes in consideration for having committed to provide the Backstop Financing.

[17] Although Mobilicity has indicated that its preference is for implementation of the Acquisition Plan, it has not reached a binding agreement with any purchaser for the sale of the Mobilicity Group despite extensive marketing efforts to date. If an acquisition cannot be completed prior to the proposed meeting of the Voting Securityholders, the Mobilicity Group may adjourn the meeting to be convened to approve the Acquisition Plan and proceed with the meeting to be convened to approve the Recapitalization Plan.

The Recapitalization Plan

[18] The Recapitalization Plan contemplates the subscription by existing debt holders of the Mobilicity Group of New Second Lien Notes in the aggregate principal amount of $75 million. The proceeds of the New Second Lien Notes will be used to repay the Second Lien Notes issued by Wireless on February 6, 2013, with the remainder to be used for general corporate purposes. Those parties who subscribe for the New Second Lien Notes will also have the right to exchange a portion of their existing debt securities for additional New Second Lien Notes. The offering of New Second Lien Notes is backstopped pursuant to the Backstop Financing arrangements in the Note Purchase Agreement. The Recapitalization Plan also contemplates that the Unsecured Senior Notes and the Convertible Notes will be satisfied by the issuance of new common shares, preferred shares and warrants, depending upon the securities being satisfied.

Voting Arrangements Under the Plans

[19] Under both Plans of Arrangement, the holders of the First Lien Notes vote as a single class and the holders of the Unsecured Debt vote collectively as a separate class. The requisite majority for approval by each class under both Plans of Arrangement is 66 2/3% of the outstanding dollar value for each class of those holders at the meetings in respect of the Plans. The holders of the Second Lien Notes do not have a vote under either of the Plans of Arrangement, as it is proposed that they will be paid out under each of the Plans of Arrangement.

[20] The following debtholders have signed support agreements in respect of each of the Plans of Arrangement: (1) holders accounting for 67% of the principal amount outstanding of the First Lien Notes; and (2) holders accounting for 94% of the principal amount outstanding of the Unsecured Senior Notes. In addition, Quadrangle has entered into an amended and restated support agreement dated April 29, 2011 with Equity Financial Trust Company, in its capacity as

trustee for the holders of the Unsecured Senior Notes (the "Support Agreement"). The Court has been advised that the effect of the Support Agreement in the present circumstances is that Quadrangle is committed to vote for the Acquisition Plan and the Recapitalization Plan, in its capacity as the holder of the Convertible Notes.

[21] Neither of the Plans contemplates a vote by shareholders to approve the Acquisition Plan or the Recapitalization Plan. Mobilicity's board of directors has concluded that the price to be achieved in any potential sale of the Mobilicity Group would not be sufficient to provide any residual value to the shareholders after satisfaction of all prior debt claims.

The Applicant

[22] It is contemplated that the Applicant will be amalgamated with another member of the Mobilicity Group under each of the Plans, and that the amalgamated entity will be the issuer of all of the new securities to be issued under the Recapitalization Plan. As the Applicant has no material liabilities, either directly or under any guarantees, it takes the position that it is solvent for purposes of section 192 of the CBCA.

The Financial Status of the Mobilicity Group

[23] The total assets and liabilities of the Mobilicity Group as of December 31, 2012 were approximately $387.5 million and $418 million, respectively, according to the audited financial statements. The Mobilicity Group's business generates revenue of approximately $6 to $7 million per month. For the fiscal quarter ended December 31, 2012, the cost of maintaining the Mobilicity Group's network and paying distributors and other service partners exceeded its revenue and financing proceeds by approximately $12 million prior to financing costs.

[24] Given its financial status, the Mobilicity Group has concluded that it needs to either reach an agreement for the sale of its business to a purchaser who is in a position to finance its operations going forward or to restructure its capital and obtain additional financing to advance its business. These two possibilities are reflected in the Acquisition Plan and the Recapitalization Plan, respectively.

[25] The Mobilicity Group has engaged financial advisors in an effort to raise additional financing and/or pursue strategic alternatives, including the sale of its business. The Second Lien Note financing arrangements agreed to in the Note Purchase Agreement were put in place to provide short-term financing to Mobilicity to enable it to continue its operations while it pursues these efforts.

The Catalyst Oppression Application

[26] The Catalyst Capital Group Inc. ("Catalyst") owns First Lien Notes having an aggregate principal amount in excess of 25% of the aggregate outstanding principal amount of such Notes.

[27] Catalyst has commenced an oppression action under the OBCA against the Mobilicity Group and the purchasers of the Second Lien Notes, among others, alleging that the transactions contemplated by the Note Purchase Agreement are unfairly prejudicial or oppressive to the holders of the First Lien Notes who are not participating in the transactions (the "Catalyst

Oppression Application"). Catalyst had previously proposed its own reorganization plan to the Mobilicity Group, which was rejected in favour of the transactions contemplated by the Note Purchase Agreement.

[28] In essence, there is an ongoing dispute between Catalyst, on the one hand, and the holders of the Second Lien Notes, supported by other holders of First Lien Notes and Unsecured Senior Notes, on the other. The latter group is also apparently supported by the holder of the Convertible Notes, Quadrangle, in accordance with the terms of the Support Agreement as described above. This is a dispute regarding competing visions for addressing the current financial needs and prospects of the Mobilicity Group.

The Interim Orders Sought on these Applications

[29] As mentioned, the Applicant is seeking interim orders that Holdings be permitted to convene and conduct meetings (the "Meetings") of the registered holders of the First Lien Notes of Wireless and of the registered holders of the Unsecured Senior Notes and the Convertible Notes of Holdings, being collectively, the Voting Securityholders, on May 21, 2013 to consider and, if determined advisable, to pass, with or without variation, resolutions adopting and approving either the Acquisition Plan or the Recapitalization Plan.

[30] The terms of the proposed interim orders sought on the motions before this Court are generally consistent with the Commercial List's Model Interim Order, with six notable exceptions as follows:

(a) the interim orders do not provide dissent rights to the shareholders of Holdings;

(b) there are limitations on the rights of certain parties described below to terminate, accelerate, amend or declare in default any contract, agreement, instrument or other document involving the Mobilicity Group as a result of the filing of the applications or the taking of steps in furtherance thereof;

(c) the Applicant sought a provision consolidating the Catalyst Oppression Application with these applications (this matter was adjourned in the course of the hearing of these applications);

(d) the Applicant seeks a provision that would count votes cast at the Meetings as votes cast in respect of an "Alternative CCAA Plan", if Mobilicity were to implement the transactions contemplated by the Plans by way of a plan of arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA");

(e) the interim orders provide for early consent deadlines, which relate to an option to receive additional consideration under each Plan in the event a stakeholder provides a commitment to support the Plans by a certain date, and further provides for election dates in respect of the Recapitalization

Plan, which relate to participation in the attendant $75 million financing; and

(f) the interim order respecting the Recapitalization Plan includes a provision for a "Senior Noteholder Payment Election" prior to the meetings which, if exercised, among other things, would terminate the right of the holders of the First Lien Notes to vote at the meeting to approve the Acquisition Plan as Voting Securityholders and provide Mobilicity with the right to deliver Wireless to a purchaser free and clear of the claims and security in respect of the First Lien Notes.

The Position of Catalyst

[31] Catalyst did not expressly oppose the relief sought on the hearing of these applications. Instead, it sought an adjournment until sometime during the week of April 29, 2013 in order to consider what, if any, objections it wishes to make to the form of the interim orders.

[32] Catalyst did not receive the application records for these applications until 1:00 a.m. on April 26, on which date the Court heard the applications commencing at 2:00 p.m. Catalyst says this was the result of a deliberate decision on the part of Mobilicity, which has been working on the Plans since the announcement of the transactions contemplated by the Note Purchase Agreement on February 12, 2013.

[33] Catalyst argues that it is unfair to proceed without being given an adequate opportunity to consider the proposed Plans and to make submissions regarding the fairness of the process. Catalyst also raised the following six specific issues on which it did not seek a determination, but which it argued justified a more complete and informed consideration at a later date.

[34] First, Catalyst argues that it is an open question whether the Applicant is solvent given the financial position of Mobilicity described above. This is addressed below.

[35] Second, Catalyst objects to treating all of the holders of the First Lien Notes in the same class for voting purposes under each of the Plans. It argues that, at the very least, the holders of First Lien Notes who are parties to the Note Purchase Agreement, and therefore were entitled to their *pro rata* share of the $8.25 million funding fee for participating in the Second Lien Note financing, have a different interest from the holders who did not participate in that transaction and should therefore be excluded from the class of holders of First Lien Notes and treated as a separate class.

[36] Third, Catalyst objects to certain provisions of the interim orders which require that a stipulated majority of the holders of First Lien Notes who currently support the Plans must consent to any amendments to the Plans or meeting materials. It suggests this constitutes an offensive delegation of powers to these parties.

[37] Fourth, Catalyst suggests that the provisions of the interim orders respecting the Recapitalization Plan dealing with the Senior Noteholder Payment Election are contrary to the terms of the First Lien Note Trust Indenture and therefore constitute an unauthorized amendment. As I indicated in chambers, I do not agree with this interpretation. However, in any

event, the Interim Orders now include language in the "paramountcy" paragraph, to which Catalyst also objects as having an uncertain consequence, indicating that nothing in the Interim Orders is intended to affect the substantive rights of any holders of First Lien Notes. This provision is understood to apply, among other things, in respect of the operation of the Senior Noteholder Payment Election.

[38] Fifth, Catalyst objects to the "no-default" provision in the Interim Orders saying, correctly, that this affects substantive rights and argues that the Court ought not to be involved in making such an order.

[39] Sixth, Catalyst suggests that there is no reason at this time for the provision in the Interim Orders dealing with the counting of votes in the event Mobilicity decides to implement an Alternative CCAA Plan under the CCAA.

Applicable Law

[40] The purpose of Interim Orders such as those requested is "to set the wheels in motion for the application process relating to the arrangement and to establish the parameters for the holding of shareholder meetings to consider approval of the arrangement in accordance with the statute": see *Re First Marathon Inc.*, [1999] O.J. No 2805 at para. 9, (Ont. S.C.J.), Blair J. (as he then was) [*First Marathon*]. I note that in *First Marathon*, Blair J. was asked to consider the adequacy of the disclosure in the management information circular that was to be distributed to the security holders for its sufficiency, which is not an issue on these applications.

[41] In *Re 45133541 Canada inc.*, [2009] Q.J. No. 18337 (Qc. Sup. Ct.) [*45133541*], Gascon, J.C.S. (as he then was) commented that, for the purposes of an interim order of the nature sought on these applications, the Court's analysis is limited to a consideration of whether the proposed plan of arrangement is put forward in good faith and whether the proposed plan complies with the statutory requirements of the CBCA. I agree with this conclusion, which necessarily remits determination of whether the proposed plan of arrangement is "fair and reasonable" to the hearing on the final order. This is particularly appropriate in the present case where it remains to be determined which Plan of Arrangement will be put to the Voting Securityholders for approval.

[42] I note, however, that nothing prevents an affected stakeholder from raising issues of a procedural nature prior to the proposed Meetings of the Voting Securityholders in accordance with the provisions of the "come back" provisions of the Interim Orders.

Analysis and Conclusions

[43] I propose to deal first with the Catalyst request for an adjournment. I will then address the requirements for approval of an interim order under section 192 of the CBCA.

The Catalyst Request for an Adjournment

[44] The request of Catalyst for an adjournment of this hearing was denied for the following reasons.

[45] The issues addressed at this stage of an application under section 192 of the CBCA are essentially procedural rather than substantive. In seeking an interim order, an applicant bears the ultimate responsibility for ensuring that the form of interim order satisfies the applicable statutory and contractual procedural requirements. While this is particularly true when an interim order is sought on an *ex parte* basis, it remains the case even if one or more stakeholders raise objections at the time the interim order is sought. Accordingly, a party affected by an interim order has the right to move to vary the order prior to the meeting to be convened to approve the proposed plan of arrangement if it can establish that the Interim Orders do not meet the two criteria addressed by courts at this stage of a plan of arrangement. Indeed, if such a party objects to any procedural aspect of the proposed stakeholder meetings, in my opinion it must raise its objection prior to the meeting of the stakeholders.

[46] In the present circumstances, it is undeniable that Catalyst has not had sufficient time to consider its position on the procedural aspects of the Plans and the Meetings addressed in the Interim Orders. However, I am not satisfied that Catalyst will suffer any material prejudice if the Interim Orders are granted, given that Catalyst remains entitled to bring a motion to vary the Interim Orders if it so chooses. Moreover, with the exception of the issue of insolvency, the Court has made no determination on the issues raised by Catalyst, apart from requiring an amendment to the paramountcy provision to clarify that such provision does not affect the substantive rights of the stakeholders in order to address the concerns raised by Catalyst. While the Court has addressed the issue of solvency, I note that Catalyst refrained from arguing directly that Mobilicity was insolvent despite ample knowledge of its current financial position, and that it remains open to Catalyst to move to vary the Court's determination on this issue on the basis of other facts or changed circumstances.

The Requirements for an Interim Order

Demonstration of Good Faith

[47] The first requirement for approval of an interim order for a plan of arrangement under section 192 of the CBCA is that the applicant demonstrate that it is acting in good faith in putting forward the proposed plan. I have no difficulty in concluding that the Applicant is acting in good faith in the present circumstances.

[48] The Plans are being proposed to further a valid business purpose, namely the continuity of the business of Mobilicity and thereby the preservation of the jobs of its employees and the continuation of its existing relationships with its suppliers and subscribers. In the absence of an Acquisition Plan, the Recapitalization Plan is intended to restructure the debt of the Mobilicity Group to provide it with a capital structure that will allow it to survive and seek to advance its operations.

Compliance with Applicable Statutory Requirements

[49] The second requirement for approval of an interim order for a plan of arrangement under section 192 of the CBCA is demonstration that the proposed plan of arrangement satisfies the applicable statutory requirements. At the stage of seeking an interim order, the Applicant must establish that:

1. the proposed arrangement constitutes an "arrangement" as defined under subsection 192(1) of the CBCA;

2. the applicant is not "insolvent" as defined in subsections 192(2) (a) and (b) of the CBCA;

3. it is not "practicable" for the applicant to effect a fundamental change in the nature of the proposed plan of arrangement under any other provision of the CBCA; and

4. the applicant gave notice of the application to the Director appointed under section 260 of the CBCA (the "Director").

See: *Re St. Lawrence & Hudson Railway Co.*, [1998] 82 A.C.W.S. (3d) 895 at para. 13, O.J. No. 3934, (Ont. C.J. Gen. Div.) per Blair J. (as he then was) [*St. Lawrence*]. I will address each of these matters in turn.

An Arrangement Under Section 192 of the CBCA

[50] I do not think it is disputed that, under existing jurisprudence, a plan of arrangement can relate to the compromise of debt. This is also accepted in the Policy Statement of the Director.

[51] I have no difficulty in finding that each of the Plans of Arrangement is an "arrangements" within the meaning of section 192 of the CBCA, as they involve;

(a) an amalgamation of two or more corporations;

(b) in the case of the Acquisition Plan, a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;

(c) in the case of each Plan, an exchange of securities of a corporation for property, money or other securities of the corporation or property, money or securities of another body corporate; and

(d) a combination of the foregoing.

The Solvency Requirement

[52] The Applicant submits that it satisfies the solvency requirement of section 192 in two ways: (1) by virtue of the Applicant's solvency; and (2) on the basis that the Mobilicity Group will be solvent at the time of the final order.

[53] In making these submissions, the Applicant relies in part on the statement of Blair J. in para. 15 of *St. Lawrence* to the effect that section 192 requires only that at least one of the corporate applicants under the proposed plan of arrangement not be insolvent as defined under subsection 192(2) of the CBCA. In addition, the Applicant points to the Policy Statement of the

Director, which recognizes that plans of arrangement may proceed where the applicant is insolvent at the time of the interim order but will be solvent at the time of the final order.

[54] As mentioned, Catalyst has suggested that there is reason to question the solvency of Mobilicity and therefore the entitlement of the Applicant to use section 192 of the CBCA. Catalyst's principal submission was, however, that the Court should defer a determination on this issue, and the other issues raised by Catalyst, until a hearing during the week of April 29, 2013. For the reasons set out below, I do not consider this to be appropriate. Accordingly, the Court must address this issue at this time. However, in doing so, the Court is relying entirely on the limited information before it, recognizing that additional information or changed circumstances after the date of the hearing may require a reconsideration of this issue.

[55] Based on the information before the Court, I conclude that the Applicant has satisfied the solvency requirement of section 192 on the following basis, which addresses the two Plans separately.

[56] In the event that the Acquisition Plan proceeds, I think it necessarily follows that Mobilicity will satisfy the solvency requirement. The only viable purchaser of the Mobilicity Group is a purchaser that is sufficiently financed that it will be able to fund repayment of the First Lien Notes and the Second Lien Notes as well as the continuing operations of Mobilicity including servicing its Unsecured Debt. By definition, such a purchaser would need to be a solvent corporation. In such circumstances, Courts have had no difficulty finding that the solvency requirement of section 192 has been satisfied: see, for example, *Re 45133541* at paras. 76 and 77.

[57] In the event that the Recapitalization Plan proceeds, the evidence before the Court upon which the Court is relying indicates that the Mobilicity Group would be solvent after implementation of the Plan. The principal effect of the Recapitalization Plan is to convert the Unsecured Debt to equity and to provide sufficient additional working capital upon the completion of the $75 million financing to permit Mobilicity to continue operations for a further, although not indefinite, period of time.

[58] In *45133541*, Gascon J.S.C. concluded that a proposed plan that would, when implemented, result in a solvent entity satisfied the solvency requirement on the basis that the applicant could be considered to be solvent at the time of the final order, even if it was insolvent at the time of the interim order. If it were necessary to do so, I would reach a similar conclusion in the present circumstances as I consider the facts in the present applications to be indistinguishable on this issue from those in *45133541*.

[59] However, the facts in the present circumstances are stronger than those in *45133541* in one respect which permits the Court to conclude that the Mobilicity Group is solvent at the present time notwithstanding its recent financial history as described above. In the present case, the requisite majorities of the two classes of Voting Securityholders have already confirmed their support of the Recapitalization Plan, and the $75 million financing is assured by virtue of the Backstop Financing. In these circumstances, the Court can take the implementation of the Recapitalization Plan as a given if there is no Acquisition Plan to be put forward for approval. On the basis that such Plan when implemented would result in a restoration of the solvency of

Mobilicity for a period of time, I think that the Court can rely on the existing commitments to implement this Plan, if required, as the basis for a determination that the Mobilicity Group is solvent for the purposes of section 192 of the CBCA.

The Impracticability Test

[60] Subsection 192(3) of the CBCA provides that a corporation may apply to a court for an order approving an arrangement where it is not "practicable" for the corporation to effect a fundamental change in the nature of an arrangement under any other provision of the CBCA.

[61] The impracticability test is interpreted broadly and considered from a practical business point of view. Courts have confirmed that the threshold of impracticability is relatively low. What is required is that the proposed arrangement be difficult to put into practice under other provisions of the CBCA: see, for example *St. Lawrence* at para. 18 and *45133541* at paras. 80-81.

[62] I also note that the Director has indicated that he is of the view that the test would be satisfied by demonstrating that it would be inconvenient or less advantageous to the corporation to proceed under other provisions of the CBCA, and presumably outside the CBCA, provided that section 192 is not used to subvert the procedural and substantive safeguards otherwise available to the stakeholders.

[63] In the present case, I accept that, due to the complexity of the Plans, it is not practicable for the Mobilicity Group to effect the complex and multi-step transactions contemplated by the Plans of Arrangement without application to the Court. In particular, each of the Plans sets out an extensive list of 'Effective Date Transactions' which must be sequenced in a particular manner for tax and other purposes. Implementation of these transactions and payments is accomplished far more efficiently by means of a plan of arrangement. If implemented outside of a plan of arrangement, each of these transactions and payments would require separate corporate or contractual authorizations, extensive documentation giving effect to the particular conveyances, transfers, amalgamations, amendments and payments, and manual filings with corporate authorities that would need to be coordinated. In addition, the Applicant requires the provisions of section 192 of the CBCA in order to effect the releases contemplated in each Plan.

Notice to the Director Under the CBCA

[64] The Applicant gave notice of the applications, together with copies of all supporting material, to the Director. The Director advised that he had determined that he did not need to appear or be heard on these applications.

[65] However, the Director noted in his correspondence to the Applicants, without taking a position on the matter, that the stay of proceedings (which is understood to mean the "No-Default") clause addressed below is unusual in an arrangement that is not proceeding under the CCAA and that the scope of this provision extends beyond the parties who are affected by the proposed arrangement. This matter is dealt with in the following section.

The "No-Default" Clause

[66] The Mobilicity Group intends to continue to conduct its business in the ordinary course during these proceedings, including making payments to creditors and suppliers in the ordinary course and in accordance with past practice. The Mobilicity Group sought a "no-default" clause in the Interim Orders to maintain the status quo during the short period while these proceedings are in progress for the following reasons.

[67] Section 6.01(7) of the First Lien Note Trust Indenture provides for an event of default, among other things, in the event that Wireless "commences a voluntary case" "pursuant to or within the meaning of Bankruptcy Law". For this purpose, "Bankruptcy Law" is defined broadly to include "other laws concerning formal or informal moratoria of debt or compositions with creditors, and proceedings seeking reorganization, arrangement, or other relief of debtors". There is, therefore, a legitimate concern that commencement of these applications may give rise to an event of default under the First Lien Note Trust Indenture. In addition, similar, although not identical, provisions exist in the instruments governing the terms of the Unsecured Senior Notes, the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes. More significantly, the Applicant says that the commencement of these applications may also give rise to a right of termination in favour of certain material suppliers, specifically Ericson Canada Inc., Research in Motion Limited, Ingram Micro Inc. and AMDOCS Canadian Managed Services Inc. (collectively, the "Material Suppliers").

[68] The Applicant sought a provision in the Interim Orders providing that leave of the Court is required to assert any right of termination, acceleration, amendment or declaration of default in respect of any contract between the Mobilicity Group and any of the Material Suppliers and in respect of First Lien Notes or the Unsecured Debt (herein, the "No-Default Clause").

[69] "No-default" provisions have been granted in similar circumstances in the past. In *45133541*, Gascon J.S.C. canvassed the law regarding similar provisions, finding as follows:

> [102] The wording of Subsection 192(4) *CBCA* is similar to that of the shareholders oppression remedy found at Subsection 241(3). It suggests a broad statutory discretion for the Court to exercise its powers.
>
> [103] Quebec courts have indeed adopted a liberal interpretation of Subsection 241(3) and confirmed that in light of its broad wording, the powers enumerated therein are not "limitative", but rather, modalities of the courts' general power to issue orders.
>
> [104] In statutory interpretation, it is well known that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament in relation to the Act.
>
> [105] From that perspective, the words used by Parliament at Subsection 192(4) not only suggest a large discretion for the Court, but also one that should be reasonably exercised in furtherance of the object of the provision. Namely, to

facilitate an arrangement and, at the very least, to allow for it to be subject to a meaningful approval process.

[106] In *Trizec*, Forsyth J. made the following observations on these broad powers under Subsection 192(4) and their exercise in respect of the rights enjoyed by secured creditors:

> Subsection 4 of section 192 gives broad power to the Court with respect, inter alia, to interim orders. The power to restrain, for example, a secured creditor is not one of the specific powers delineated, and if it exists must be found in the general language which states, the Court "may make any interim or final order it thinks fit".
>
> On consideration of the whole of the section and the purposes of same, I am satisfied that in appropriate circumstances, given that the arrangement might affect the rights of secured creditors, <u>the power to restrain enforcement of security and thus attempt to preserve the status quo pending consideration of the arrangement by parties affected can be found in the broad general language of section 192(4).</u>" [Emphasis added in the original]

[107] In that case, Subsection 192(4) was interpreted as allowing the Court to restrain creditors' rights by issuing, in addition to a no-default order, a stay of proceedings similar to the stay order requested from this Court.

[108] Interim Orders which prevent creditors from calling defaults under various credit agreements have also been rendered in the following cases dealing with arrangements under Section 192 *CBCA*:

> -*Call-Net* Interim Order, para. 48:
>
> "THIS COURT ORDERS THAT no party, including without limitation the Trustee, shall have any rights to terminate, accelerate or treat as accelerated, amend or declare in default any contract or other agreement to which Call-Net is a party due to Arrangeco or Call-Net being a party to this proceeding or having made an application to this Court pursuant to section 192 of the CBCA." Call-Net Interim Order, para. 48:
>
> -*Tembec* Interim Order, para. 29:
>
> "THIS COURT ORDERS THAT no person, including, without limitation any Noteholders or Indenture Trustees, shall have any rights to terminate, accelerate, amend or declare in default any contract or other agreement including, without limitation, the Indentures, to which any of the Applicants or Tembec Inc. are a party, due to the Applicants being a party to this proceeding,

> having made an application to this Court pursuant to section 192 of the CBCA or having failed to make any interest or other payments during the period prior to such time as the within Arrangement is approved by the Court and implemented by the Applicants, without further order of this Court." [Emphasis added]
>
> -*Telesystem* Interim Order, para. 35:
>
> "DECLARES that the filing and presentation of the present Application, the I issuance of the Interim Order, the filing of the Plan of Arrangement into the Court record and the passing of the Arrangement Resolution by the TIW Shareholders do not constitute an event of default pursuant to the Amended 7.00% Equity Subordinated Debenture Indenture, as amended (the 'Indenture')."

> [109] These various decisions support a broad statutory discretion for the courts to issue orders in the context of Section 192 arrangements.

[70] I am satisfied that the Court has the power under section 192 to issue a "no-default" order in appropriate circumstances, although I think this is a power that should only be used in special circumstances given that section 192 operates with respect to solvent corporations.

[71] In the present circumstances, the provisions are directed toward a legitimate objective and are limited in operation to the only circumstances in which an event of default could create material difficulties for Mobilicity in its efforts to sell its business to a third party or to restructure. I note as well that, in view of the majorities already committed to supporting the proposed Plans, the holders of each of the Unsecured Senior Notes, the Unsecured Pari Passu Notes, the Unsecured Subordinated Notes and the First Lien Notes are in a position to waive any defaults that would arise as a result of these applications (the No-Default Clause also provides that the holders of the Second Lien Notes consent to such a provision in respect of such Notes).

[72] In addition, and in any event, as the Interim Orders were essentially obtained on an *ex parte* basis, any affected party, including Catalyst, has the right under the Interim Orders to move to vary this provision of the Interim Orders. In these circumstances, I think it appropriate to grant the requested relief regarding the "No-Default" provisions in the Interim Orders at this time.

[73] Accordingly, the Interim Orders approved by the Court included the No-Default Clause sought by the Applicant.

Conclusion

[74] For the above reasons, the Interim Orders were granted in the forms attached to this Endorsement as Schedules A and B, which reflect amendments to the forms of interim order sought that have been agreed to by Catalyst regarding: (1) an addition to the paramountcy provision; and (2) an addition of a formal "come-back" provision.

W. Wilton-Siegel J.

Wilton-Siegel, J.

Date: May 1, 2013

J

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

Dard Moore

A Commissioner, etc.

Court File No.: CV-13-10081-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE.

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC., AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

Applicant

AFFIDAVIT OF JAMES RILEY
(Sworn May 27, 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 a Partner in The Catalyst Capital Group Inc. ("Catalyst"), and have been directly involved in the within proceeding as well as the proceeding which have been recently initiated under the *Canada Business Corporation Act*, R.S.C., 1985 c. C-44 ("**CBCA**"). As such I have personal knowledge of the matters hereinafter deposed to, except when otherwise identified in which case I have stated the source of my information and belief.

2. I am a graduate of the University of Toronto (LL.B.) and Harvard University (LL.M.) and have been a member of the Ontario bar since 1979. Prior to joining Catalyst in 2011, I practiced law for more than 30 years in Toronto in the areas of corporate, banking and

insolvency law, and participated in numerous complex financing and insolvency matters, as well as trust indenture financings.

3. On Thursday, May 16, 2013, the Mobilicity Group (such term and other capitalized terms, which are not otherwise defined therein, have the meaning set out in the Telus Acquisition Plan as defined below), publicly announced that it had entered into an acquisition transaction with Telus Corporation. Also on this date, the Mobilicity Group posted on its website an amended version of the Acquisition Plan that was referred to in the Interim Order of the Court dated April 25, 2013 in order to reflect the terms of the transactions with Telus.

4. Attached hereto and marked as **Exhibit** A to this affidavit is a true copy of the amended Acquisition Plan with the changes and additions referred to above, designated by blue-lined, red-lined and green-lined notations, all as posted on the Mobilicity website on May 16, 2013 (the "**Telus Acquisition Plan**").

5. As can be seen from Exhibit A, and as confirmed by the Affidavit of William Aziz dated May 23, 2013, the terms of the original Acquisition Plan have been amended and supplemented by hundreds of changes and additions, and the terms of the Telus Acquisition Plan and the documentation in connection therewith are very complicated, convoluted and voluminous.

6. The Mobilicity Group now seeks to obtain court approval for the Telus Acquisition Plan on Tuesday, May 28, 2013, in accordance with an order which it circulated late on Friday, May 24, 2013, as part of a 1500 page application record. For reasons set out hereinafter, Catalyst seeks an adjournment of the May 28 hearing in order to enable a fair

and appropriate consideration of the revised acquisition plan that has recently been circulated.

Events Leading up to the Telus Acquisition Plan

7. I am advised by David C. Moore and verily believe that the following events and contacts occurred in the week leading up to the announcement and website posting of the Telus Acquisition Plan:

(a) On Thursday, May 9, 2013, Catalyst delivered a further affidavit of Gabriel de Alba in reply to the affidavit of William Aziz sworn May 2, 2013 in Catalyst's oppression proceeding and responding to the contents of the alternative Recapitalization Plan and bare bones Acquisition Plan that the Mobilicity Group circulated in late April 2013 and filed pursuant to the CBCA;

(b) On Friday, May 10, 2013, Mr. Moore contacted Mr. Kestenberg and Mr. Pasparakis to discuss the next steps in connection with Catalyst's oppression proceedings and the CBCA filings by Mobilicity, which counsel had suggested should be heard together;

(c) In particular, Mr. Moore explained that the aforementioned affidavit of Mr. de Alba had been delivered two days later than intended because it included extensive references to and comments upon Mobilicity's CBCA filings, which had taken Catalyst considerable time to review and analyze, subject matters which had not been known at the time the schedule of the oppression proceedings had been agreed upon;

(d) Messrs. Kestenberg and Pasparakis acknowledged the complexity of the CBCA filings and raised no issue or objection to the inclusion of the references to their filings in Mr. de Alba's May 9th affidavit or in connection with the date of its delivery;

(e) Rather, Messrs. Kestenberg and Pasperakis raised the question as to what the appropriate procedure would be if Mobilicity were to be proceeding with its acquisition plan based upon a real transaction with a purchaser and on terms yet to be announced. They indicated that there was no certainty that this course of action was a possibility and expected an announcement regarding same would be made one way or the other on Monday, May 13, 2013 or Tuesday May 14, 2013;

(f) In the course of this discussion, Mr. Moore indicated that he wished to conduct a cross-examination of Mr. Aziz on the two affidavits that he had filed, one of which related to the CBCA proceedings (April 24, 2013) and the second of which responded to Catalyst's oppression application (May 2, 2013). The context was that Catalyst's oppression proceeding had been delayed by an unsuccessful motion initiated by Mobilicity to prevent Catalyst from proceeding. Attached hereto and marked as **Exhibit B** is a copy of the Endorsement of Her Honour Judge Mesbur, dated April 11, 2013 which held that Catalyst should be permitted to proceed with its case;

(g) Rather than schedule the cross-examinations of Mr. Aziz and Mr. de Alba, Mr. Kestenberg suggested that there be a further discussion about next steps early the following week once it was known which of the two alternative plans Mobilicity would be proceeding on;

(h) Mr. Kestenberg also suggested that if Mobilicity was proceeding with its acquisition plan, there would be no need for Catalyst's oppression proceeding because in that event all of the First Lien Noteholders would be paid in full. Mr. Moore indicated that he did not necessarily agree with this conclusion because the initial acquisition plan filed by Mobilicity was unclear as to how certain "make-whole" provisions contained in the First Lien Note Indenture would be treated. Mr. Moore indicated that Catalyst wished to ensure that all of its claims or potential claims in connection with the make-whole were preserved in case there was any issue about its payment. Mr. Kestenberg indicated that he believed that there was no intent to prejudice the make-whole provisions but acknowledged that some clarification in this regard would be desirable;

(i) In the result, it was agreed that further discussions would take place early the following week regarding cross examinations and related matters, including the completion of document production. With respect to this latter issue, Mr. Moore sent an email on May 10, 2013 to counsel for certain of the First Lien Noteholders confirming Catalyst's acceptance of the implied undertaking rule in relation to such documents and inquiring as to their delivery. Attached hereto and marked as **Exhibit C** is a true copy of this email;

(j) No announcement of Mobilicity's intentions occurred on May13 or 14, 2013, and on May 15, 2013 Mr. Moore began emailing Messrs. Kestenberg and Pasparakis to schedule cross-examinations and to follow up regarding documents. Attached hereto and marked as **Exhibits D** and **E** are true copies of these emails;

(k) On Thursday, May 16, 2013, Mobilicity announced that it had entered into the transaction with Telus referred to above. On the same day, Mr. Kestenberg emailed Mr. Moore indicating that he had been tied up previously and unable to return Mr. Moore's inquiries. Mr. Kestenberg also suggested a conference call with counsel for certain of the First Lien Noteholders (who are respondents in Catalyst's oppression proceeding) to discuss next steps in light of the above announcement;

(l) Originally, the conference call was scheduled for 2 p.m. and then for 3 p.m. to accommodate Mr. Meyer's schedule. At 2:44 p.m., prior to any discussion, Mr. Kestenberg circulated an email indicating that Mobilicity would be filing a hearing request for the approval of the Telus Acquisition Plan, returnable May 28, 2013. Attached hereto and marked as **Exhibit F** is a true copy of this email; and

(m) Mr. Moore was unable to join the conference call until approximately 3:12 p.m., by which time the call had ended. In a subsequent conversation with Mr. Kestenberg, Mr. Moore was advised that the call had been brief and that Mr. Meyers had not been available in any event. Mr. Moore indicated that he did not think that all of the steps required to be taken before any approval hearing, including steps with respect to Catalyst's oppression proceeding could be completed in time for a hearing on May 28, 2013. Mr. Moore agreed to consider the matter further and undertook to contact Mr. Kestenberg the following day regarding this issue.

8. I am further advised by Mr. Moore and verily believe that on Friday, May 17, 2013, he contacted Mr. Kestenberg again and left a message confirming that in Catalyst's view it was inappropriate to proceed with any approval hearing on May 28, 2013 and that in the absence of any agreement, a 9:30 a.m. appointment should be scheduled following the long weekend, on Tuesday, May 21, 2013. Attached hereto and marked as **Exhibit G** are true copies of emails received by Mr. Moore on Friday, May 17, 2013 regarding this attendance.

9. I am further advised and verily believe that towards the end of the day on Friday, May 17, 2013, Mr. Moore contacted Mr. Kestenberg again to inquire about the utility of having any discussion about an appropriate schedule in relation to the Telus Acquisition Plan and that Mr. Kestenberg advised Mr. Moore that he was operating under instructions and had no authority or ability to discuss any change to the May 28, 2013 hearing date. I am further advised and verily believe that Mr. Kestenberg also indicated that if Mr. Moore wanted to contact him over the long weekend, he could do so via email.

The Telus Acquisition Plan and Subsequent Events

10. The posted materials relating to the Telus Acquisition Plan consisted of the aforementioned Exhibit A, as well as a Supplemental Information Statement dated May 16, 2013, which attached (i) the Telus Acquisition Plan, (ii) the Arrangement Agreement, and (iii) fairness opinion of Morrison Park Advisors. Attached hereto and marked as **Exhibit H** is a true copy of these materials.

11. Catalyst is the holder of over $60 Million of First Lien Notes and its share of the make-whole referred to above is approximately $23 million. Catalyst has consistently advised Mobilicity, both through the oppression proceedings initiated by Catalyst and by numerous other contacts and communications, that Catalyst believes that the First Lien Noteholders who participated in the February 6, 2013 Financing have and are continuing to act oppressively and in violation of their fiduciary duties to the other un-conflicted First Lien Noteholders. In particular, Catalyst has asserted that by using their majority position (including by way of voting in relation to the proposed Plans of Arrangement) to improperly obtain financial benefits for themselves at the expense of, and in conflict with, the other First Lien Noteholders, the Initial Consenting Noteholders have acted improperly and contrary to the First Lien Indenture.

12. Over the long weekend of May 18-20, 2013, I and other members of the Catalyst team, including Michael Zack and Andrew Yeh, together with outside counsel, David Moore and Jonathan Levin, reviewed the newly posted materials to determine the impact of the Telus Acquisition Plan upon Catalyst and other First Lien Noteholders, particularly those First Lien Noteholders, who, like Catalyst are un-conflicted, since they do not hold any junior debt in Wireless or any debt or other interest in Holdco.

13. The documentation in question was, for me at least, very difficult to read and understand. While the documentation indicated that the principal and accrued interest of the First Lien Notes was going to be repaid immediately if the Telus transaction is approved by the Government of Canada, there was no clear indication of what the position was regarding the "make-whole" provision in section 3.07 of the First Lien Indenture.

14. In this regard, while the documentation did not appear to include any provision for payment to the First Lien Holders under section 3.07 of the First Lien Indenture, there was no explanation as to why such payment would not be made. Given the fact that the Telus Acquisition Plan was structured in a manner which provided for the early redemption of the First Lien Notes (i.e. prior to their stated maturity), it was and is Catalyst's expectation that such provisions would be honoured in respect of this redemption. Instead, the structure of the proposed Telus transaction appeared to be that, following payment of principal and accrued interest on the First Lien Notes, all of the remaining "excess funds" resulting from the purchase price of $380 million would be directed to the payment of debt obligations at Wireless (the Second Lien Notes created in the February Financing) and other subordinate and/or unsecured debt obligations of Holdings.

15. This direction of payments is also inconsistent with the reasonable expectations of Catalyst (and other stakeholders who do not hold any other indebtedness claim of the Mobilicity Group). Indeed, the Initial Consenting Noteholders could have had no expectations that they would receive any amount in respect of their Unsecured Senior Notes other than from assets of Holdings.

16. It is also evident that the four holders of Unsecured Senior Notes (who also are First Lien Noteholders) who were parties to the February Financing (i.e., CI Investments Inc.,Marret Asset Management Inc., Guardian Capital LP, and GCIC Ltd.) and who are now described as the "Initial Consenting Noteholders" in the materials relating to the Telus Acquisition Plan, hold both the Second Lien Notes in Wireless (whose validity is challenged in the Catalyst's oppression proceeding) <u>as well as</u> a substantial portion of the

debt at Holdings, both of which are being paid or partially repaid out of the so-called "excess funds" referred to above.

17. Based upon Catalyst's review of the Telus Acquisition Plan, the Initial Consenting Noteholders, who apparently hold 50.4% of the First Lien Notes, are treated in a preferential manner, to the detriment of Catalyst and other un-conflicted First Lien Noteholders, in the following respects:

(a) first, as noted above, monies which would and in my view should have been used to pay the "make-whole" obligation under section 3.07 of the First Lien Trust Indenture are being redirected to pay unsecured debt of Holdings (not Wireless) held by the Initial Consenting Noteholders;

(b) second, the payments received by the Initial Consenting Noteholders as a result of the Telus Acquisition Plan appear to include repayment of $8.25 Million of Second Lien Notes, plus interest thereon at 15.5% - (this is the fee whose legal validity is being challenged by Catalyst in the pending oppression proceedings, because of, *inter alia*, an apparent breach of the criminal interest rate provisions in section 347 of the Criminal Code);

(c) third, the Initial Consenting Noteholders may well be in receipt of additional fees and financial benefits (e.g. payment of their legal fees), the details of which are not disclosed in the materials which have been circulated; and

(d) fourth, the Initial Consenting Noteholders remain in control of many important aspects of the Telus Acquisition Plan, including but not limited to the decision regarding the issuance of a Senior Noteholders Election Notice, described in greater detail below.

18. According to Catalyst's calculations, the current value of the entire "make whole" is at least $71 million, and the redirection of those funds pursuant to the structure and transaction apparently contemplated in the Telus Acquisition Plan will result in a substantial extra return to and preference in favour of the Initial Consenting Noteholders and others.

19. The above conclusions were based upon the assumption that Mobilicity never intended to pay the "make-whole" under the Telus Acquisition Plan. However, given the lack of reference to the make-whole payment in the Telus Acquisition Plan, the uncertainties regarding Mobilicity's treatment thereof and the lack of any meaningful disclosure, Catalyst's counsel sent the following email to Mr. Kestenberg and Mr. Pasparakis on the holiday Monday, May 20 at 1:35 p.m.:

> "1. I am having great difficulty understanding how the Telus Acquisition works Plan insofar as it relates to the payment of the make whole to the First Lien Holders. I would therefore greatly appreciate it if you could answer the following questions.
>
> 2. Does Mobilicity intend/agree that the make whole will be paid if the Telus Acquisition proceeds: (a) Yes (b) No?
>
> 3. If the answer to the above question is "(b) No", on what basis does Mobilicity contend that the make whole is NOT payable?
>
> 4. If a First Lien Holder delivers a Support Agreement, does that result in a loss by such Lien Holder of any entitlement to obtain its make whole, or even to argue that same should be payable?
>
> 5. The above questions are not intended to be argumentative or anything like that, I am just trying to understand the implications of the Telus plan in simple English.

Thank you,

David Moore"

20. Mr. Pasparakis responded on Tuesday, May 21, 2013 at 8:57 p.m.:

> 2. No
>
> 3. The terms of the indenture govern
>
> 4. Yes.

I find it extraordinary that only on May 21, 2013 was a candid response to the make-whole question given by Mobilicity, and that, contrary to any reasonable disclosure standard, nothing regarding this was provided in their information circular and proxies were solicited without disclosure of such highly material information.

21. Also on May 20, 2013, Mr. Moore sent the following email to Messrs. Pasparakis and Kestenberg, with a copy to counsel for the "Initial Constating Notification":

> "I have made repeated requests for documents which were requested on April 17, 2013, which counsel subsequently undertook to provide: see *inter alia* my emails dated May 10 and 15, 2013. These requests have gone unanswered.
>
> ... the assurances of counsel regarding the documents requested by Catalyst, including assurances made to Morawetz J. on April 24, 2013, have NOT been honoured. Instead, my emails requesting same have been ignored.
>
> Similarly, my requests for production of the Support Agreements, *as signed*, which Mr. Meyers acknowledged and said he "would look into" on May 10, 2013 have also been ignored."

Attached hereto and marked as **Exhibit I** is a true copy of this email. No response was received to this email prior to the 9:30 a.m. attendance before Campbell, J on May 21, 2013 referred to below; to date there has been no response and none of these documents has been produced.

22. On Tuesday, May 21, 2013, at 8:47 a.m., Mr. Moore sent a further email to Mr. Kestenberg and Mr. Pasparakis, setting out some of the history referred to above, including Catalyst's continuing and unanswered requests for documents, Catalyst's unsuccessful attempts to arrange for cross-examination of Mr. Aziz on the two affidavits he had filed up to that time, Catalyst's concerns over the fairness and propriety of the Telus Acquisition Plan, and the issues regarding the scheduling of the May 28, 2103 hearing which Mobilicity was insisting upon. Attached hereto and marked as **Exhibit J** is a true copy of this email.

23. Given the fact that the 9:30 a.m. hearing Report Form sent in by Mobilicity did not describe any of the concerns which Catalyst had raised, or the related history relevant to those concerns, a copy of the above email was also sent to the Court so that Justice Campbell could be apprised of Catalyst's position about the scheduling of the Telus Acquisition Plan for the purpose of the 9:30 am attendance that had been scheduled by Mobilicity.

24. Attached hereto and marked as **Exhibits K** and **L** are true copies of further emails reflecting the above and Mobilicity's objection to Catalyst's position being provided to the Court through the aforementioned email.

25. Following the above exchanges, counsel for all interested parties, including myself, attended before Justice Campbell in Chambers on Tuesday, May 21, 2013. Catalyst, through counsel, reiterated its concerns and objections to the process being followed, including the May 28 scheduling and emphasized the fact that in Catalyst's view, Mobilicity and the Initial Consenting Noteholders were improperly attempting to avoid

and/or circumvent the payment of the $71 million make-whole and that this was related to and a continuation of the oppressive conduct that had begun back in February 2013. Catalyst stressed that there was no way all of these issues could be fairly or properly adjudicated on May 28, 2013.

26. Their appeared to be concessions on this latter point. Mobilicity suggested that the May 28, 2013 hearing under the CBCA could proceed if Catalyst was provided appropriate documentation and binding assurances that dealing with the Telus Acquisition Plan could proceed without in any way prejudicing Catalyst's claims in relation to the make-whole, under the First Lien Indenture, based upon oppression principles, or otherwise. Catalyst indicated it would give consideration to this suggestion and as a result, Justice Campbell endorsed the 9:30 report form accordingly: Attached hereto and marked as **Exhibit M** is a true copy of Justice Campbell's endorsement.

27. Following their attendance, Catalyst gave consideration to the concept that had been suggested by Mobilicity and agreed to draft formal terms to accomplish the objective of fully protecting Catalyst's potential claims if the Telus Acquisition Plan was considered on May 28, 2013. As a result, early on Wednesday, May 22, 2013, Catalyst's counsel forwarded suggested terms to counsel for Mobilicity by email. Attached hereto and marked as **Exhibit N** is a true copy of this email and the terms attached thereto.

28. I am advised by Mr. Moore and verily believe that on Wednesday afternoon, May 22, 2013, Mr. Kestenberg advised Mr. Moore that Mobilicity preferred to provide the assurances it had referred to during the attendance before Justice Campbell through revisions to the Telus Acquisition Plan itself, rather than as a separate document and that

Mobilicity would provide its response to the terms which had been forwarded earlier in the day by Mr. Moore in that manner.

29. At 5:35 p.m. on May 22, 2013, Mobilicity provided a blacklined version of an Amended Telus Acquisition Plan to Mr. Moore via email from Mr. Kestenberg. Attached hereto and marked as **Exhibit O** is a true copy of this email, but not the attachments thereto as such was delivered on a "draft" without prejudice basis.

30. Discussions continued throughout Wednesday evening of May 22, 2013 regarding the terms and draft wording that had been exchanged. I was directly involved in these discussions. At approximately 11:00 p.m. that night, Mobilicity circulated an amended Telus Acquisition Plan which contained some but not all of the terms which Catalyst had proposed. Subsequently, Mobilicity circulated its amended Telus Acquisition Plan by posting same on its website. Attached hereto and marked as **Exhibits P** (black-lined) and **Q** (clean-copy) are true copies of the Amended Telus Acquisition Plan that Mobilicity posted on its website, late on Wednesday, May 22, 2013, as a result of the above exchanges (the "**Amended Telus Acquisition Plan**").

31. As noted above, Mobilicity did not include all of the terms which Catalyst had requested in the aforementioned exchanges and discussions. The Amended Telus Acquisition Plan did (and does) contain the following Section 6.3, which was and is intended (as far as Catalyst is concerned) to provide Catalyst with a full opportunity to pursue any and all claims and issues described therein without such claims or issues being prejudiced in any way by the Telus Acquisition Plan or any approval thereof.

6.3 Reservation Regarding First Lien Noteholder Claims to Obligations

Notwithstanding any other provision of this Plan, nothing in this Plan or in any approval thereof shall in any way adversely affect the ability of a First Lien Noteholder to assert against the Holdback Amount:

(a) any First Lien Noteholder's right to claim any form of Obligation owed under the terms of the First Lien Note Indenture, as the same is in effect on the date hereof;

(b) any First Lien Noteholders' right to claim compensation for the loss of any Obligation owed under the terms of the First Lien Note Indenture, as the same is in effect on the date hereof, including without limitation, based upon or resulting from:

> (i) any breach of the terms of the First Lien Note Indenture, as the same is in effect on the date hereof;
>
> (ii) any breach of duty (including, without limitation, breach of fiduciary duty) by any Person in respect of any Obligation owed under the terms of the First Lien Note Indenture, as the same is in effect on the date hereof;
>
> (iii) any oppressive conduct by any Person in respect of any Obligation owed under the terms of the First Lien Note Indenture, as the same is in effect on the date hereof; or
>
> (iv) any other or related similar claims in respect of any Obligation owed under the terms of the First Lien Note Indenture, as the same is in effect on the date hereof, provided that in each such case of (a) and (b) above, any recovery in respect of any and all such claims shall be only in respect of claims existing prior to the Effective Date and (x) asserted solely against the Holdback Amount and (y) limited in recourse to the Holdback Amount and to each First Lien Noteholder's Pro Rata Share of the Holdback Amount;

(c) any First Lien Noteholders' right to reimbursement of costs incurred by the First Lien Noteholder in pursuing any such claims in the event that such costs are reimbursable under the terms of the First Lien Note Indenture, as the same is in effect on the date hereof, or are ordered by the Court, provided that any reimbursement of such costs shall be limited in recourse to the Holdback Amount;

(d) any procedural rights which a First Lien Noteholder had or would have had in connection with the adjudication of any such claims, including any and all rights of production and discovery that a First Lien Noteholder would otherwise have against any Person shall be preserved;

(e) the right of any party to seek further directions from the Court regarding the determination of any such claims following the exercise of the Senior Noteholder Payment Election.

For greater certainty, any reference to "Person" in this Section 6.3 shall not include the Purchaser Released Parties.

32. This provision was included in the Amended Telus Acquisition Plan which was voted upon by the First Lien Noteholders the following day (with Catalyst objecting and voting against).

33. On its face, the above Article 6.3 appears to address many of Catalyst's concerns. However, the Amended Telus Acquisition Plan as voted upon and as currently being advanced for approval has several fundamental flaws. Most importantly, the Amended Telus Acquisition Plan contains <u>two alternative</u> methods of dealing with the obligations of the First Lien Noteholders, as set out in Article 4 thereof:

> 4.2 Payment to the First Lien Noteholders
>
> (a) If the Senior Noteholder Payment Election is not exercised, upon the completion of all of the sequential steps provided for in Section 5.3(b), the Trust Company shall as soon as reasonably practicable transfer the First Lien Note Payment Amount and the First Lien Note Support Amount (less any amounts withheld, paid or payable pursuant to Section 4.9) to the First Lien Note Indenture Trustee and the First Lien Note Payment Amount and the First Lien Note Support Amount shall be, and shall be deemed to be, received by the First Lien Noteholders in full and final payment, settlement, extinguishment, release and discharge of all obligations under the First Lien Note Indenture. Each First Lien Noteholder as of the Effective Date shall receive its Pro Rata Share of the First Lien Note Payment Amount (less any amounts withheld, paid or payable in respect of such First Lien Noteholder pursuant to Section 4.9) and each Supporting First Lien Noteholder as of the Effective Date shall receive its Pro Rata Share of the First Lien Note Support Amount (less any amounts withheld, paid or payable in respect of such First Lien Noteholder pursuant to Section 4.9) in accordance with terms set out in the Trust and Escrow Agreement to the First Lien Note Indenture Trustee and in a manner consistent with the procedures set out in the First Lien Note Indenture.
>
> (b) If the Senior Noteholder Payment Election has been exercised and the Senior Noteholder Payment Election Notice has been delivered then:
>
> > (i) Pursuant to the steps provided for in Section 5.3(b), the Trust Company shall as soon as reasonably practicable transfer the First

Lien Note Payment Amount (less any amounts withheld, paid or payable pursuant to Section 4.9) to the First Lien Note Indenture Trustee from the Purchase Price and the First Lien Note Payment Amount shall be, and shall be deemed to be, received by the First Lien Noteholders, and the Trust Company shall retain funds from the Purchase Price equal to the Holdback Amount in escrow as contemplated by the Senior Noteholder Payment Election all in consideration for the complete satisfaction and discharge of all Obligations (as defined in the First Lien Note Indenture) owing to the First Lien Noteholders, and the First Lien Noteholders shall be deemed to be Unaffected Creditors under the Plan and the approval of the Arrangement Resolution shall be deemed not to be required for approval of the Plan. Each First Lien Noteholder as of the Effective Date shall receive its Pro Rata Share of the First Lien Note Payment Amount (less any amounts withheld, paid or payable in respect of such First Lien Noteholder pursuant to Section 4.9) in accordance with terms set out in the Trust and Escrow Agreement and in a manner consistent with the procedures set out in the First Lien Note Indenture.

(ii) Upon the determination of the applicable First Lien Note SNPE Payment Amount, by the Court or agreement of the applicable First Lien Noteholder, Quadrangle and the Requisite Majority of the Initial Consenting Noteholders (and Wireless, if prior to the Effective Date) the Trust Company shall as soon as reasonably practicable thereafter (or, concurrently with the payment made pursuant to Section 4.2(b)(i) if the applicable First Lien Note SNPE Payment Amount is determined prior to the Effective Date) transfer the applicable First Lien Note SNPE Payment Amount (less any amounts withheld, paid or payable pursuant to Section 4.9) to the First Lien Note Indenture Trustee and such First Lien Note SNPE Payment Amount shall be, and shall be deemed to be, received by the applicable First Lien Noteholder(s) in full and final satisfaction of such Person's Pro Rata Share of the Holdback Amount. Each First Lien Noteholder as of the Effective Date shall receive its First Lien Note SNPE Payment Amount (less any amounts withheld, paid or payable in respect of such First Lien Noteholder pursuant to Section 4.9) in accordance with terms set out in the Trust and Escrow Agreement or the Trust Company to the First Lien Note Indenture Trustee and in a manner consistent with the procedures set out in the First Lien Note Indenture.

(iii) As soon as reasonably practicable after the payment of all the First Lien Note SNPE Payment Amounts to the First Lien Note Indenture Trustee pursuant to Section 4.2(b)(ii) above, the Trust Company shall transfer the Released Payment Amount, if any, in accordance with Section 4.11.

(c) Pursuant to and in accordance with all of the sequential steps provided for in Section 5.3(b), the First Lien Noteholders shall cease to have any rights under the First Lien Notes, the First Lien Note Indenture and the First Lien Noteholder Claims formerly held by them, including to receive any payments of principal, interest, premiums, penalties and/or expenses under the First Lien Notes and the First Lien Note Indenture, but rather the rights of the First Lien Noteholders shall be limited to receiving their Pro Rata Share of the First Lien Note Payment Amount, and either (i) their Pro Rata Share of the First Lien Noteholder Support Amount in the event that the Senior Noteholder Payment Election is not exercised or (ii) their First Lien Note SNPE Payment Amount, as applicable (in each case less any amounts withheld, paid or payable pursuant to Section 4.9) in the event that the Senior Noteholder Payment Election is exercised. For greater clarity, in the event that the Senior Noteholder Payment Election is exercised, no First Lien Note Support Amounts shall be payable to any of the Supporting First Lien Noteholders.

34. Mobilicity has confirmed that if the procedure under Section 4.2(a) is followed – i.e., if the Senior Noteholder Payment Notice under section 4.2(b) above is not given, there will be no holdback amount of $71 million and none of the protections set out in section 6.3 regarding Catalyst's claims will ever be applicable.

35. With respect to section 4.2(b) above, the Senior Noteholder Payment Election is defined as follows in the Amended Telus Acquisition Plan.

> **"Senior Noteholder Payment Election"** means the election that the Applicant is authorized to make, pursuant to the Interim Order upon sending the Senior Noteholder Payment Election Notice, with the consent of the Requisite Majority of the Initial Consenting Noteholders on a date to be determined by the Purchaser in consultation with the Requisite Majority of the Initial Consenting Noteholders to repay in full all Obligations (as defined in the First Lien Note Indenture) owing to the First Lien Noteholders at the time of such prepayment in accordance with the First Lien Note Indenture by (i) providing for payment of the First Lien Note Payment Amount to the First Lien Noteholders in accordance with the Plan and the Trust and Escrow Agreement and (ii) providing for payment into escrow in accordance with the Plan, for the sole benefit of the First Lien Noteholders (subject only to any rights or liens of the First Lien Note Indenture Trustee pursuant to the First Lien Note Indenture or otherwise) the Holdback Amount. For greater certainty, the exercise of the Senior Noteholder Payment Election will not result in any increase to the Purchase Price payable by the Purchaser;

36. Based upon the above definition, the use and application of section 4.2(b) of the Amended Telus Acquisition Plan are dependent upon three separate things: (1) a permissive decision by Mobilicity to make the election; (2) the consent of the majority of the Initial Consenting Noteholders; and (3) the determination by Telus of the date of the applicable notice. Accordingly, under the Amended Telus Acquisition Plan there is no assurance whatsoever that the Senior Noteholder Payment Election would ever occur, and if it does not, Mobilicity's assurances about providing protection to Catalyst (made both to Justice Campbell and Catalyst), contained in section 6.3 of the Plan, would be meaningless.

37. The prejudice to Catalyst and other un-conflicted First Lien Noteholders, and the unfairness of the existing Amended Telus Acquisition Plan are even more evident if the wording of section 4.2(a) of the said Plan is examined carefully. Under section 4.2(a), the payment to the First Lien Noteholders is restricted to the payment of principal and accrued interest, and the result would be an <u>extinguishment</u> of any entitlement to any further payments:

> (a) If the Senior Noteholder Payment Election is not exercised, upon the completion of all of the sequential steps provided for in Section 5.3(b), the Trust Company shall as soon as reasonably practicable transfer the First Lien Note Payment Amount and the First Lien Note Support Amount (less any amounts withheld, paid or payable pursuant to Section 4.9) to the First Lien Note Indenture Trustee and <u>the First Lien Note Payment Amount and the First Lien Note Support Amount shall be, and shall be deemed to be, received by the First Lien Noteholders in full and final payment, settlement, extinguishment, release and discharge of all obligations under the First Lien Note Indenture</u>. Each First Lien Noteholder as of the Effective Date shall receive its Pro Rata Share of the First Lien Note Payment Amount (less any amounts withheld, paid or payable in respect of such First Lien Noteholder pursuant to Section 4.9) and each Supporting First Lien Noteholder as of the Effective Date shall receive its Pro Rata Share of the First Lien Note Support Amount (less any amounts withheld, paid or payable in respect of such First Lien Noteholder pursuant to

Section 4.9) in accordance with terms set out in the Trust and Escrow Agreement to the First Lien Note Indenture Trustee and in a manner consistent with the procedures set out in the First Lien Note Indenture.

38. In the Amended Telus Acquisition Plan which has been amended and voted upon over Catalyst's objection, and which is currently before the court, Mobility, the Initial Consenting Noteholders and Telus have reserved to themselves the right to elect to proceed under section 4.2(a) in the Plan. If this occurs, there will be a complete extinguishment of any entitlement of Catalyst to its share of the make whole or to assert any of the other claims set out in section 6.3. Such a result, together with the releases and stay provisions contemplated by the Telus Acquisition Plan would end Catalyst's claims for the make-whole, oppression, or any other claims. Such a result would sanction unequal and unfair financial advantage, which the Initial Consenting Noteholders would have obtained for themselves through a misuse of their majority holdings (50.4%) of the First Lien Notes in circumstances which are oppressive, in violation of their common law duties, and in violation of the First Lien Indenture itself and other applicable legal considerations. This misconduct has its origins in the February Financing and in the agreements, understandings and commitments made at that time, the details of which are not fully known to Catalyst because of the continuing refusal of Mobilicity and the Initial Consenting Noteholders to provide the relevant documents and information.

39. Catalyst supports the acquisition of Mobilicity by Telus, as was set out in the Press Release which Catalyst issued on May 16, 2013, a copy of which is attained hereto as **Exhibit R**. However, Catalyst's support was based upon the premise, as stated in the press release, that "as the largest debt holder of Mobilicity, Catalyst is open to any deal that fully honours its rights..."

40. The current Amended Telus Acquisition Plan is not fair or reasonable and does not respect Catalyst's rights under the First Lien Indenture, nor does it preserve Catalyst's ability to continue to pursue its claims for oppression and breach of duty. At all times, Catalyst had an expectation that if the First Lien Notes were repaid in advance of the dates prescribed by section 3.07 of the First Lien Indenture, the make whole would be paid. This is all without appropriate disclosure to Catalyst and other un-conflicted Fist Lien Noteholders whose proxies were solicited prior to the issue of the disclosure documents. Catalyst further had an expectation that its fellow First Lien Noteholders would not abuse their position by attempting to circumvent the obligations contained in the First Lien Indenture to the detriment of the other First Lien Noteholders.

41. In these circumstances, Catalyst objects to the Court conducting a fairness hearing with respect to the Amended Telus Acquisition Plan and wishes to have an opportunity prior to any such hearing to do the following:

(a) to cross examine Mr. Aziz on all of the affidavits he has filed, including his affidavits herein dated April 24 and May 24, 2013 and in the oppression proceeding dated May 3, 2013;

(b) to question, pursuant to Rule 39.03, representatives of CI Investments Inc. (Geof Marshal Vice President of Signature Global Asset Management, a division of CI Investments Inc.), Marrett Asset Management Inc. (Barry Allan), Mobilicity (Stewart Lyons, President and CCO), and Telus (Stephen Lewis, Vice President of Corporate Strategy), and a representative of Morrison Park Advisors Inc., regarding the fairness and propriety of the Amended Telus Acquisition Plan, including any and all questions relating to the issues of oppression, breach of duty, and fairness associated therewith; and

(c) to obtain the documentation which it has requested from time to time from Mobilicity and, *inter alia*, CI Investments and Marrett Asset Management Inc.

42. In taking the above positions, Catalyst has considered the assertions contained in the Aziz May 24, 2013 affidavit regarding Mobilicity's current "distress." On my reading of the Amended Telus Acquisition Plan, there is no urgency whatsoever to the granting of Court approval on May 28, 2013. In this regard, the completion of the Telus acquisition is conditional upon governmental approval and the term of the Plan contemplate that such approval will take until early August, and perhaps longer. This expectation, as reflected in the Amended Telus Acquisition Plan, is consistent with recent public statements which have been attributed to the Federal Industry minister, Christian Perry that "the government will take the time required to review the proposal carefully." Attached hereto and marked as **Exhibit S** hereto is a true copy of a newspaper article dated May 16, 2013, referring to this statement. In addition, the Plan itself contemplates non-refundable funding by Telus of $10 milllion on or before June 10, 2013, regardless of whether the sale transaction is ever approved or implemented.

43. In these circumstances, there does not appear to be any urgency which would warrant an immediate fairness hearing without Catalyst having been provided with any opportunity to respond to this application and advance its oppression claims.

44. I swear this Affidavit is support of Catalyst's motion for, *inter alia*, an adjournment of the within Application, and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario this 27^{th} day of May, 2013.	))))))	
Commissioner for Taking Affidavits (or as may be) Dianna M. Soos	))	James Riley

K

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

David Aurora

A Commissioner, etc.

Court File No: CV-13-10081-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR. JUSTICE	)	THE 28TH DAY
	)	
C L CAMPBELL	)	OF MAY, 2013

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE *CANADA BUSINESS CORPORATIONS ACT,* R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC., AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

Applicant

ORDER
(TELUS Acquisition Plan)

THIS APPLICATION made by the Applicant, 8440522 Canada Inc. (the "**Applicant**"), pursuant to section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**"), for an Order approving the Revised TELUS Plan of Arrangement dated May 22, 2013, attached to this Order as Schedule "A" (the "**Plan**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavits of William E. Aziz, sworn April 24, 2013, May 2, 2013, May 24, 2013 and May 27, 2013, and all of the exhibits thereto, and on hearing the submissions of counsel for the Applicant, the Initial Consenting Noteholders, TELUS Corporation, Catalyst Capital Group Inc. and QCP CW S.A.R.L.;

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UPON BEING SATISFIED that: (i) the meeting (the "**Meeting**") of the registered holders of 9.5% first lien senior secured notes (the "**First Lien Notes**") of Wireless, registered holders of 15% senior unsecured debentures (the "**Unsecured Senior Notes**") of Holdings, registered holders of unsecured convertible debentures of Holdings ranking pari passu with the Unsecured Senior Notes (the "**Unsecured Pari Passu Notes**") and registered holders of unsecured convertible debentures of Holdings ranking subordinate to the Unsecured Senior Notes and the Unsecured Pari Passu Notes (the "**Unsecured Subordinated Notes**"; and together with the Unsecured Senior Notes and the Unsecured Pari Passu Notes, collectively, the "**Unsecured Notes**", and collectively the registered holders of the Unsecured Notes and the registered holders of the First Lien Notes, the "**Voting Securityholders**") was called, held and conducted in accordance with the terms of the Order of the Honourable Mr. Justice H.J. Wilton-Siegel, dated April 26, 2013, (the "**Acquisition Plan Interim Order**"), (ii) the Voting Securityholders approved the Arrangement Resolution in accordance with the terms of the Acquisition Plan Interim Order, and (iii) the Senior Noteholder Payment Election was duly exercised in accordance with paragraph 24 of the Acquisition Plan Interim Order and the Plan

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall be as defined in the Plan.

2. **THIS COURT ORDERS** that appropriate notice in respect of the Meeting was provided in all respects and the Meeting was duly called and held in accordance with the Acquisition Plan Interim Order and the Plan.

3. **THIS COURT ORDERS** that (i) the Plan has been approved by the Required Majority in conformity with the CBCA and the Acquisition Plan Interim Order, as applicable, (ii) the Mobilicity Group has complied with the provisions of the CBCA and the Acquisition Plan

Interim Order, and (iii) the Mobilicity Group has not done or purported to do anything that is not authorized by the CBCA or the Acquisition Plan Interim Order.

4. **THIS COURT ORDERS** that the Plan is an arrangement within the meaning of section 192 of the CBCA and the Plan and the transactions contemplated thereby are fair and reasonable, provided that this approval and the distribution of funds pursuant to the Plan shall be in accordance with the terms of this Order and the Plan.

5. **THIS COURT ORDERS** that the Plan shall be and is hereby approved, subject to and in accordance with the terms of this Order.

6. **THIS COURT ORDERS** that as of the Effective Date, the Plan and all associated steps, transactions, arrangements, assignments, extinguishments, discharges, releases and the recapitalization effected thereby as set out in the Plan are approved, binding and effective as therein set out, and on the terms and conditions set forth in this Order, upon the Mobilicity Group, all Affected Creditors, the Second Lien Noteholders, the collateral agent under the Second Lien Note Purchase Agreement and all other Persons affected by the Plan.

7. **THIS COURT ORDERS** that the steps to be taken and the transactions, arrangements, assignments, extinguishments, discharges and releases to be effected on the Effective Date are deemed to occur and be effected in the sequential order and at the times contemplated by Section 5.3.

8. **THIS COURT ORDERS** that the releases contemplated in the Plan, including those set out in Sections 6.1 and 6.2 of the Plan are hereby approved.

9. **THIS COURT ORDERS** that, notwithstanding any provision contained in this Order or the Plan, the provisions of Section 4.2(b) of the Plan (and not section 4.2(a) of the Plan) shall apply with respect to the treatment of and payments to the First Lien Noteholders under the

Plan, including, without limitation, the adjudication of the issues referred to in section 6.3 of the Plan.

10. **THIS COURT ORDERS** that the granting and the terms of this Order, and the positions, deliveries and other action taken in support thereof, are subject to and without prejudice to and do not impair or adversely affect in any way the rights and entitlements of any person under Section 6.3 of the Plan, including but not limited to the right to fully adjudicate all of the issues referred to in Section 6.3 thereof at a later date. For greater certainty this Court hereby confirms that any Person is entitled (by way of a notice of application) to an adjudication of the merits of the issues referred to in Section 6.3 of the Plan and that such adjudication of the merits of said issues is not prejudiced or adversely affected in any way by this Order or by any other provisions of the Plan, and the provisions of Section 6.3 are hereby specifically approved and confirmed on that basis.

11. **THIS COURT ORDERS** that, subject to and without prejudice to any adjudication of the issues referred to in Section 6.3 of the Plan, the commencing, taking, applying for, issuing or continuing any and all steps or proceedings, including, without limitation, with respect to administrative hearings and orders, declarations or assessments, against any of the Released Parties in respect of any Released Claims is hereby permanently stayed.

12. **THIS COURT ORDERS** that the Plan, any payments or distributions made in connection with the Plan or the recapitalization of the Mobilicity Group, and the transactions contemplated by and to be implemented pursuant to the Plan, shall not be void or voidable under federal or provincial law and shall not constitute and shall not be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances, transfers at undervalue, or other reviewable transactions under any applicable federal or provincial