NO. S1610905
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND
IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED
AND
IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025 CANADA INC. AND TELIPHONE DATA CENTERS INC.

NINETEENTH REPORT OF THE MONITOR

ERNST & YOUNG INC.

August 9, 2021

TABLE OF CONTENTS

TO THE

NINETEENTH REPORT OF THE MONITOR

LISTING OF APPENDICES

INTRODUCTION

Origin of this CCAA Proceeding

1. On November 18, 2016, 8640025 Canada Inc. (**"864**") filed a Notice of Intention ("**NOI**") to make a Proposal pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and Boale, Wood & Company Ltd. ("**Boale Wood**") was appointed as Trustee.

2. On November 25, 2016, the NOI proceeding was continued, by order of the Supreme Court of British Columbia ("**Court**"), into a proceeding commenced by 864 and Teliphone Data Centers Inc. (together referred to hereinafter as the "**Companies**" or the "**Petitioners**") under the *Companies' Creditors Arrangement Act* ("**CCAA**") and Boale Wood was appointed as Monitor (the "**Original Monitor**") in the within proceedings.

3. The Petitioners primarily re-sold telecommunications products and services derived from Telus Communications Company ("**Telus**") and the BCE Group (collectively, the "**Network Providers**") to corporate and enterprise customers throughout Canada. The Petitioners also provided some telecommunications services to "Residential Customers", primarily in Quebec and on Vancouver Island (the "**Business**").

4. The Petitioners commenced proceedings under the CCAA primarily to stay Telus from disconnecting critical services after this Honourable Court dismissed an application by the Petitioners on November 18, 2016 for an injunction preventing Telus from doing so. The Reasons for Judgment (released November 25, 2016) are attached hereto as **Appendix "A"**.

5. As of the CCAA filing date, the Business had accumulated in excess of $40 million of liabilities to its lenders and suppliers, including in excess of $17 million to Secured Creditors. The Petitioners were also engaged in a number of legal disputes with their major suppliers and landlords.

6. The Monitor notes that the Petitioners appear to be controlled directly or indirectly by Mr. Benoit Laliberte. Mr. Laliberte is an undischarged bankrupt.

Substitution of EYI as Monitor with Specific Enhanced Powers

7. On December 21, 2016, this Honourable Court granted an order ("**EYI Order**") that, *inter alia*:

   (a) discharged Boale Wood as CCAA monitor;

   (b) appointed Ernst & Young Inc. ("**EYI**") as CCAA monitor (the "**Monitor**"), and enhanced the powers of the Monitor to provide it with certain unique powers that reflected the circumstances that existed at that time, including, *inter alia*:

      (i) a direction to carry out a process for solicitation of all offers to invest in the Petitioners or to purchase all or part of the Petitioners' assets, whether as a going concern or otherwise (the "**Solicitation Process**");

      (ii) directed the Monitor to carry out a review and evaluation of the assets of the Petitioners; and

      (iii) authorized and directed the Monitor to review and approve all disbursements proposed by the Petitioners.

8. A hearing to approve the fees and activities of Boale Wood has not yet occurred.

Emergence of TNW Networks Corp.

9. Following its appointment as Monitor on December 21, 2016, management of the Petitioners advised the Monitor that all of the customer contracts and agreements relating to the business of the Petitioners, as well as a number of other related entities, had been assigned to TNW Networks Corp. based on a form template letter (the "**Form Letter**") dated January 1, 2016. The Form Letter, a copy of which is attached hereto as **Appendix "B"**, advised each customer that their respective customer agreement had been assigned to TNW Networks Corp. ("**TNW Networks**") pursuant to the "appropriate assignment clauses" with the Petitioners or any of their legacy entities. The Monitor noted that the customer

assignments appear to have occurred without monetary consideration having been paid to the respective assignor.

10. TNW Networks is controlled directly or indirectly by Mr. Laliberte.

11. Based on the above, the Monitor advised this Honourable Court of the various challenges associated with carrying out a Solicitation Process for the assets of the Petitioners when the entity that purportedly held all of the customer agreements forming the revenues of the Business was not a Petitioner entity itself.

12. On January 19, 2017, the Secured Creditors of the Petitioners filed a notice of application (the "**Secured Creditor Application**") requesting that this Honourable Court grant an order that, *inter alia*, added three additional companies into these proceedings, namely TNW Networks, Teliphone Corp. and Teliphone Canada Corp., all of which were controlled directly or indirectly by Mr. Laliberte.

13. On January 30, 2017, this Honourable Court dismissed that part of the Secured Creditor Application that sought the addition of TNW Networks, Teliphone Corp. and Teliphone Canada Corp. as petitioners in the within Proceedings. On that date, this Honourable Court also pronounced a Claims Process Order which established a deadline for filing claims (a "**Claims Bar Date**") of March 17, 2019.

The Receivership Application

14. On March 7, 2017, the Secured Creditors filed a notice of application to appoint a receiver over the Petitioners, TNW Networks and Teliphone Canada Corp (the "**Receivership Application**").

15. The Receivership Application argued over a period of several days starting on March 13, 2017. On April 5, 2017, the presiding judge, Mr. Justice Bowden, signalled that he was likely to pronounce a Receivership Order if the parties were unable to agree upon the terms of an order which provided the Monitor with enhanced powers to address the various concerns of the Secured Creditors.

The April 6, 2017, Enhanced Monitor Powers Order

16. On April 6, 2017, key stakeholders including Mr. Laliberte, the Monitor and legal counsel for each of the Secured Creditors, met and agreed upon a form of order that granted the Monitor receiver-like powers over both the Petitioners and TNW Networks. At this meeting, Mr. Laliberte asserted that certain property in the possession of TNW Networks was owned by parties other than TNW Networks. In the end, the parties agreed to the form of an Order (the "**April 6, 2017 Order**") that:

    (a) added Teliphone Canada Corp. as a Petitioner in the within proceedings and granted, *inter alia*, the Monitor control over the day to day operations of the Petitioners; and

    (b) applied all provisions of the April 6, 2017 Order which applied to the Petitioners to TNW Networks with equal force and effect (including the Stay of Proceedings);

    (c) provided the Monitor with broad powers of a receiver found in the language of the Model Receivership Order, including the power to take possession and exercise control over the property of the Petitioners as well as TNW Networks; and

    (d) market the Petitioners property for sale, including the property of TNW Networks (being the customer agreements) if:

        (i) such property was "derived directly or indirectly" from property of the Petitioners, their subsidiaries, or any other entities subject to the Secured Creditors' security; or

        (ii) the Monitor was unable to determine the origin of the property (for clarity only the property of TNW Networks that would be unavailable for sale is property that could be isolated and confirmed as property derived from a source other than a Petitioner, a subsidiary of a Petitioner, or a related party entity that was subject to the security of the Secured Creditors).

17. A copy of the April 6, 2017 Order is attached hereto as **Appendix "C"**.

Emergence of the Claiming Persons

18. Following the pronouncement of the April 6, 2017 Order, the Monitor, on numerous occasions and over several months, requested of Mr. Laliberte a list of property, including assets, customer agreements, plant and equipment, or other property that was being used in the Business, but which was not property of the Petitioners or TNW Networks.

19. On June 7, 2017, Mr. Laliberte presented the Monitor with a report that purported to outline a number of non-arm's length entities (related parties), including Teliphone Corp. and TNW Networks Corp. (the "**Claiming Persons**"), having an interest in various assets in the possession of the Petitioners and TNW Networks. Other than TNW Networks (that purportedly owned the customer agreements of the Business), management of the Petitioners, including Mr. Laliberte, had previously described most of the Claiming Persons as "legacy" or "shell" entities without assets or operations.

20. The Monitor noted in paragraphs 116 to 123 of its Seventh Report that, *inter alia*:

    (a) the report provided by Mr. Laliberte indicated an ownership structure that differed from certain materials filed by the Petitioners in these proceedings, including audited financial statements and organizational charts;

    (b) the assets of the Business are highly integrated in nature and there is no meaningful way to segregate the assets and customer relationships of the Business to various legal entities without a major examination, which would be extremely costly and would likely conclude that all of the assets, at minimum, are subject to the security interests of the Secured Creditors;

    (c) the complex organizational structure employed by the Petitioners and the use of different entities made it extremely difficult to trace the ownership of assets;

(d) in the Monitor's view the complexity of the organizational structure is entirely unnecessary given the relative simplicity of the operating model of the Business; and

(e) the Monitor was prepared to undertake a more in-depth review of the ownership claims of the Claiming Persons, if required by this Honourable Court, including a full scale forensic examination, although such a review would require significant time and cost.

The Original Distributel APA and First Appeal

21. On July 18, 2017, Mr. Justice MacIntosh granted an order (the "**Sale Approval order**"), which approved a sale transaction for substantially all of the assets of the Business pursuant to an asset purchase agreement (the "**Original Distributel APA**") dated June 30, 2017, between the Monitor for and on behalf of the Petitioners and TNW Networks (as vendor) and 10276375 Canada Inc. ("**1027**"), a newly formed subsidiary of Distributel Communications Ltd. (as purchaser).

22. On July 24, 2017, Teliphone Corp. and TNW Networks sought leave to appeal the Sale Approval Order. On July 25, 2017 the Court of Appeal granted leave to appeal the Sale and Approval Order and stayed the closing of the transaction as contemplated in the Sale Approval Order pending the hearing of the appeal.

23. On August 14, 2017, the appeal was heard. On August 17, 2017, the Court of Appeal allowed the appeal and set aside the order approving the Distributel APA. The Court of Appeal noted that it did not have the benefit of a finding of fact on whether the assets to be conveyed in the Distributel APA included third party assets; but, stated that the preponderance of evidence it reviewed was that third party assets were included in the asset schedules attached to the Distributel APA. The Court of Appeal thus approached the Appeal on the footing that the Distributel APA included third party assets. The Court of Appeal did not; however, specify which assets belonged to third parties.

The Revised Distributel APA

24. On August 28, 2017, the Monitor filed its Twelfth Report in connection with an application for the approval of the Monitor to execute a revised APA with 1027 (the "**Revised Distributel APA**") and a corresponding sale approval and vesting order.

25. The Revised Distributel APA amended the Original Distributel APA to provided for:

    (a) the immediate acquisition of a narrow list of assets (the "**Required Purchased Assets**");

    (b) a carve-out for all assets that were then claimed by the Claiming Persons (the "**Disputed Assets**") pending further Order of this Honourable Court, with the exception of certain "Critical Disputed Property" (that was described in the Twelfth Report) included within the Required Purchased Assets; and

    (c) an option for 1027 to acquire additional assets of the Petitioners and TNW Networks, including the Disputed Assets, if this Honourable Court determined that the Monitor had the ability to sell those assets.

26. Given the uncertainty around the condition of the Business and the dispute over ownership of certain assets and, in particular, the customer relationships claimed by the Claiming Persons (the "**Disputed Customers**"), the Revised Distributel APA was structured in a manner that tied the purchase price (the "**Purchase Price**") to retained revenues and the assets that 1027 will actually able to be purchase.

27. The Purchase Price payable under the Revised Distributel APA is payable in part by cash and in part by delivery of a promissory note (the "**Promissory Note**").

28. On September 15, 2017, Mr. Justice Affleck issued an Order (the "**First Vesting Order**") authorizing the Monitor to execute the Revised Distributel APA and granting the corresponding Sale Approval and Vesting Order.

29. Paragraph 12 of the Vesting Order provided for a procedure to resolve the ownership claims of Teliphone Corp. and others respecting the Disputed Assets (term defined in the Vesting Order) (the "**Disputed Property Claims Process**"). Attached as **Appendix "D"** is a copy of the First Vesting Order.

30. The First Vesting Order also approved the activities and conduct of the Monitor in the within proceedings as described in the Twelfth Report, and the Supplemental Report, and the Twelfth Report and the Supplemental Report themselves in all respects. The First Vesting Order was not appealed.

31. The closing of the transaction (the "**First Closing**") in respect of the Required Purchased Assets pursuant to the Revised Distributel APA completed September 28, 2017.

32. Following the First Closing:

    (a) 1027 was renamed to Navigata Communications Ltd. ("**NCL**"), which is the name in which it carries out business today; and

    (b) NCL has been managing the Disputed Assets on behalf of the Monitor pursuant to a "**Transition Services Agreement**", a copy of which was presented to this Honourable Court in the Monitor's Fourteenth Report.

The Disputed Property Claims Process

33. On September 27, 2017, legal counsel for Teliphone Corp. ("**Lunny Atmore**") wrote a letter to the Monitor, referencing two affidavits sworn in the within proceedings, which together purported to be a Proof of Claim filed by the Claiming Persons, delivered to the Monitor pursuant to paragraph 12 of the Vesting Order.

34. On October 18, 2017, the Monitor filed its "**Fourteenth Report**" in which it, *inter alia*, updated this Honourable Court respecting the Disputed Claims Process and the proofs of claim, or purported proofs of claim, filed by the Claiming Persons pursuant to paragraphs 12 of the Vesting Order (the "**Property Proofs of Claim**"); and the Monitor's response thereto, notably the Monitor's disallowance of most of the Property Proofs of Claim (the "**Proofs of Claim Disallowance**") by

way of two letters attached to the Fourteenth Report dated October 4, 2018 and October 16, 2018.

The Second Vesting Order and Second Appeal to the BC Court of Appeal

35. In accordance with the First Vesting Order, a number of Claiming Persons including Teliphone Corp. and TNW Networks (the "**Property Claimants**") appealed the Proofs of Claim Disallowance to this Honourable Court.

36. On November 29, 2017, the Monitor filed its "**Fifteenth Report**" in which it provided information pertaining to, *inter alia*, an application for a second vesting order which was granted by Mr. Justice Affleck on December 14, 2017 in regard to certain Optional Purchased Assets (the "**Second Vesting Order**"). Attached as **Appendix "E"** is a copy of the Second Vesting Order.

37. The Second Vesting Order also approved and ratified the activities and conduct of the Monitor in the within proceedings as described in the Thirteenth Report, the Fourteenth Report, and the Fifteenth Reports in all respects.

38. The First Vesting Order and Second Vesting Order are together defined as the "**Vesting Orders**". The Second Vesting Order was not appealed.

39. On December 14, 2017, this Honourable Court made a further order that dismissed the applications filed by the Property Claimants appealing the Proofs of Claim Disallowance (the "**Proof of Claim Appeal Dismissal Order**").

40. On December 20, 2017, TNW Networks and various other entities filed an application to appeal the Property Claim Appeal Dismissal Order. On January 4, 2018 the Court of Appeal granted leave to hear the application limited to the following question:

> *"Whether the Chambers Judge erred in holding that, in a CCAA proceeding, the standard of review on an appeal from a determination made by a court-appointed monitor conducting a proof of claim process with respect to the ownership of disputed assets is "overriding and palpable error; a clear and obvious mistake", as opposed to "correctness"?"*

41. On March 14, 2018, the Court of Appeal allowed the appeal from the Property Claim Appeal Dismissal Order, finding that the appeal from the Monitor's determination of the proof of claim was a "true" appeal and that the applicable standards is:

    (a) correctness, on extricable questions of law; and

    (b) palpable and overriding error, for factual determinations and questions of mixed fact and law.

42. The Court of Appeal then set aside Property Claim Appeal Dismissal Order and remitted the matter of the Monitor's disallowance of the Property Proofs of Claim back to this Honourable Court to be determined in accordance with the applicable standards of review.

The Third Transaction

43. On February 6, 2018, the Monitor filed its "**Sixteenth Report**" in which it, *inter alia*, a) described the closing of the transaction pursuant to the Second Vesting Order, and b) informed this Honourable Court of a "**Second Option Notice**" exercised by NCL to acquire the majority of the remaining unvested assets in the possession of the Petitioners and TNW Networks (the "**Remaining Purchased Assets**"), including certain assets which were Disputed Assets at the time (the "**Third Transaction**").

44. A Sale Approval and Vesting Order is now being sought by the Monitor in connection with the Third Transaction (as described below).

Further Applications made by the Claiming Persons

45. TNW Networks along with a number of other related parties sought, in a Notice of Application filed May 2, 2019 (the "**May 2 Application**"), various relief from this Honourable Court, including, *inter alia*, an order that certain assets that NCL acquired pursuant to the Second Vesting Order be returned to the Claiming Persons.

46. On May 9, 2018, NCL filed a Notice of Application in which it, *inter alia*, sought an order striking out certain of the relief sought in the May 2 Application.

47. On June 4, 2018, 9151-4877 Quebec Inc. dba Dialek Telecom (and perhaps others) filed an application in which it sought an "injunction preventing the disconnection of services on the network of NCL that relate to any of the 'Dialek customers'" (the "**Injunction Application**") until such a time that:

    (a) the Monitor has released to 9151-4877 Quebec Inc. dba Dialek Telecom all of the funds it has collected for services billed through the Dialek billing system for services provided after September 29, 2017; and

    (b) the appeal from the Monitor's decision respecting the Claiming Parties' proofs of claim have been finally determined.

48. Mr. Justice Affleck had been seized in this CCAA proceeding; however, due to scheduling issues, Mr. Justice Sewell heard the applications described above in early June 2019.

49. On June 13, 2018, Mr. Justice Sewell pronounced two separate orders as follows:

    (a) an order dismissing the Injunction Application, with costs awarded to NC (2018 BCSC 1259); and

    (b) an order striking out those parts of the May 2 Application seeking an entitlement to assets that had been sold pursuant to either Vesting Order (2018 BCSC 1260).

50. The Oral Ruling of Justice Sewell on the Injunction Application is attached hereto as **Appendix "F"**. The Oral Ruling of Justice Sewell striking out parts of the May 2 Application is attached hereto as **Appendix "G"**.

Re-hearing of the Proofs of Claim Disallowance

51. On August 27-29, 2018, Mr. Justice Affleck re-heard the appeal of the Proofs of Claim Disallowance in accordance with the applicable standards of review as determined by Court of Appeal.

52. On January 2, 2019, Mr. Justice Affleck released Reasons for Judgment in which he dismissed the appeal. In his reasons, Mr. Justice Affleck concluded that he had not been presented with any argument that persuaded him to change the conclusion that he had reached in his reasons of December 14, 2017 on the first chambers appeal that the Monitor made no reviewable error (the "**Second Appeal Dismissal**").

53. In January 2019, Teliphone Corp., TNW Networks, as well as the remainder of the "Claiming Persons" sought leave to appeal the Second Appeal Dismissal. On April 23, 2019, the Court of Appeal granted leave to appeal the Second Appeal Dismissal (the "**Third Appeal**").

The Monitor Replacement Application

54. On July 10, 2019, prior to the hearing of the Third Appeal, Teliphone Corp. filed a Notice of Application for a number of orders including, *inter alia*, (a) a declaration that Teliphone Corp. was a secured creditor of the Petitioners, and (b) an order that EYI be substituted and replaced as Monitor in the within proceedings by L.W. Murphy Ltd. (the "**Monitor Replacement Application**")

55. On October 10, 2019, Mr. Justice Affleck released Reasons for Judgment in which he dismissed the Monitor Replacement Application. A copy of the Reasons for Judgment are attached hereto as **Appendix "H"**.

56. In his Reasons for Judgment, Mr. Justice Affleck found, *inter alia*, that:

    (a) Teliphone Corp. did not file a proof of claim in accordance with the Claims Process Order; and

    (b) the Claims Bar Date applied and Teliphone Corp. had no standing as a creditor under s. 11.7(3) of the CCAA to apply to substitute the Monitor.

57. Based on the Reasons of Mr. Justice Affleck, the Monitor is of the view that none of the Claiming Persons or Mr. Laliberte have standing to make further submissions in the within proceedings as creditors of the Petitioners.

The Third Appeal

58. The Third Appeal was heard on October 15-16, 2019, and dismissed by the Court of Appeal on December 27, 2019, (the "**BCCA Dismissal Order**"). The Court of Appeal found that:

    (a) the Monitor's conclusions in the Proofs of Claim Disallowance were based on findings of fact or mixed fact and law, for which there was evidentiary support, and the process was based on prior court orders that were not appealed; and

    (b) Mr. Justice Affleck did not err in concluding that the appellants had not shown that the Monitor made an error of law or a palpable and overriding error of fact.

Leave Application to the Supreme Court of Canada

59. On February 24, 2020, Teliphone Corp. sought leave of the Supreme Court of Canada to appeal the BCCA Dismissal Order.

60. On November 5, 2020, the Supreme Court of Canada dismissed the application for leave to appeal the BCCA Dismissal Order with costs.

61. The Monitor is of the view that Mr. Laliberte and the Claiming Persons have now exhausted all available remedies to pursue Property Claims against the Petitioners and TNW Networks, including the assets that are the subject of the Third Transaction with NCL.

Concluding the Within Proceedings

62. This CCAA proceeding has been lengthy and contentious. The Monitor estimates that there have been approximately 100 appearances before this Honourable Court and the Court of Appeal.

63. As a result of the lengthy and unexpected appeals process described above, (collectively, the "**Appeals**"), NCL and the Monitor (on behalf of the Petitioners) had been unable to confirm the full scope of the Purchased Assets that could be vested in NCL.

64. The Monitor notes that the Third Transaction (if approved) together with the First Vesting Order and the Second Vesting Order would accomplish what the Original Distributel APA set out to achieve. The Third Transaction would implement the original transaction, following a robust claim and appeal process through all levels of Court to confirm no third party assets are being sold and the Monitor is of the view that the proposed transaction is within the Court's jurisdiction.

65. The Stay Period was extended from time to time in this CCAA proceeding and was allowed to expire on February 1, 2021 when the Monitor concluded that a Stay was no longer required after the SCC denied the Claiming Persons' leave to appeal the BCCA Dismissal Order and thereby concluding all litigation with respect to same.

66. The within proceedings have been financed in part by the following Court approved charges (the "**Charges**") in favour of the "**Chargeholders**" noted below totaling $4,718,000 over all of the Property of not only the Petitioners but also TNW Networks:

(a) First – the Administration Charge in the amount of $725,000 as security for professional fees and disbursements incurred both before and after the making of the Initial Order in respect of the within proceedings;

(b) Second – the Network Providers' Charge (to the maximum of $890,000) as security for the provision of ongoing telecommunications services provided by Telus and Bell for resale by the Petitioners;

(c) Third – the DIP Lender's Charge in the amount of $1,603,000 as security for amounts advanced to the Petitioners by Bond Capital (the "**DIP Lender**") prior to pronouncement of the April 6, 2017 Order that granted the Monitor receiver-like powers over both the Petitioners and TNW Networks; and

(d) Fourth – the Monitor's Borrowing Charge in the amount of $1,500,000 as security for amounts advanced to the Petitioners by the DIP Lender following the pronouncement of the April 6, 2017 Order.

67. The Monitor notes that the funds available for distribution to stakeholders of the Petitioners and TNW Networks are materially less than the quantum of the Charges. The Monitor expects that no amounts will be available for distribution to stakeholders who rank behind the Chargeholders.

The Nineteenth Report of the Monitor

68. The purpose of this Nineteenth Report of the Monitor is to provide this Honourable Court with information on the following:

    (a) the proposed transaction to sell the majority of the remaining assets of the Petitioners and TNW Networks to NCL (defined above as the Third Transaction);

    (b) relief sought by the Monitor with respect to funds garnished by a related party from a TNW Networks bank account;

    (c) the "**Proposed Distribution**" to the Chargeholders;

    (d) professional fees and disbursements;

    (e) the conclusion of the CCAA proceedings and discharge of the Monitor.

69. The Monitor was first represented by McCarthy Tetrault LLP in the within proceedings but has been represented by Miller Thomson LLP ("**Miller Thomson**") since September 2017.

TERMS OF REFERENCE

70. In preparing this Nineteenth Report, the Monitor has been provided with, and in making the comments herein relied upon, audited financial information, unaudited financial information, certain books and records of the Petitioners, financial information prepared by the Shareholder Representatives (defined below) and by the Executive Management Team (defined below), and discussions with management, including the Shareholder Representatives and the Executive Management Team. The Monitor has not audited such information

and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of such information contained in this Seventeenth Report.

71. This Nineteenth Report has been prepared for the use of this Honourable Court and the Petitioners' stakeholders as general information relating to the Petitioners and their operations. Accordingly, the reader is cautioned that this Nineteenth Report may not be appropriate for any other purpose. The Monitor assumes no responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Nineteenth Report contrary to the provisions of this paragraph.

72. Unless otherwise stated all monetary amounts contained herein are expressed in Canadian Dollars.

73. Capitalized terms not defined in this Nineteenth Report are as defined in the ARIO, the EYI Order, the Solicitation Plan, the Second Report, the Supplement to the Second Report, the Third Report, the Fourth Report, the Fifth Report, the Supplement to the Fifth Report, the Sixth Report, the Seventh Report, the Supplement to the Seventh Report, the Eighth Report, the Supplement to the Eighth Report, the Ninth Report, the Tenth Report, the Supplement to the Tenth Report, the Eleventh Report, the Twelfth Report, the Supplement to the Twelfth Report, the Thirteenth Report, the Fourteenth Report, the Fifteenth Report, the Sixteenth Report, the Seventeenth Report, the Eighteenth Report or the Revised Distributel APA.

74. Key terms for this report, previously defined include:

    a) **Executive Management Team** means Mr. Owen Gilbert, Mr. Glen Gregory, Mr. Eric Unrau, Mr. Rajiv Ranjan and Mr. Chris Oxford; and

    b) **Shareholder Representatives** means, Mr. Benoit Laliberte, Mr. Sandeep Panesar and Mr. Lawry Trevor-Deutsch.

THE THIRD TRANSACTION

75. Paragraphs 35 to 44 of the Sixteenth Report describe the background to the proposed Third Transaction.

76. NCL has acquired the bulk of the assets of the Business pursuant to the Vesting Orders. The Remaining Purchased Assets consist primarily of the Disputed Customers and other ancillary assets that form part of the revenue base of the Business.

77. As described above, on January 12, 2018, the NCL delivered to the Monitor the Second Option Notice to acquire the Remaining Purchased Assets. A copy of the Second Option Notice was attached as Appendix "D" to the Sixteenth Report (with customer names redacted) and is re-attached hereto as **Appendix "I"**.

78. When the Supreme Court of Canada rendered its decision to dismiss the Claiming Persons' application for leave to appeal the BCCA Dismissal Order, the Monitor and NCL re-engaged with respect to:

    (a) completing the Third Transaction;

    (b) settling the terms for payment of the balance of the Purchase Price under the Revised Distributel APA should the Third Transaction complete; and

    (c) consulting with the Chargeholders on a distribution and sharing of the residual proceeds of the Petitioners following a closing of the Third Transaction.

79. In late May 2021, NCL, the Monitor and the Network Providers arrived at a consensus on the sharing of the residual proceeds of the Petitioners pursuant to a distribution scheme described in a later section of this report. The Monitor also consulted extensively with the DIP Lender.

80. On July 30, 2021, counsel for NCL wrote to the Monitor and took the position that the delay in seeking court approval for the closing of the transaction contemplated by the Second Option Notice has frustrated the Second Option Notice, thus excusing NCL from further performance under the Revised Distributel APA pursuant to the Second Option Notice. The letter further advised that notwithstanding that position, NCL is prepared to complete the sale of the Remaining Purchased Assets, subject to certain conditions set out in the letter. Attached hereto as **Appendix "J"** is a copy of the July 30, 2021, letter from counsel for NCL. The Monitor has agreed to the terms set out in that letter.

81. On August 6, 2021, NCL delivered to the Monitor an Amended and Restated Second Option Notice to replace the Second Option Notice. Attached hereto as **Appendix "K"** is a copy of the Amended and Restated Second Option Notice.

82. The Monitor has confirmed that the Remaining Purchased Assets formed part of the assets listed on the schedules contained in the Revised Distributel APA. The Monitor notes that all litigation with respect to any and all claims by the Claiming Persons over the Remaining Purchased Assets has concluded. The Remaining Purchased Assets can be sold by the Monitor pursuant to the April 6, 2017 Order without further opposition by the Claiming Persons and the Monitor recommends that this Honourable Court approve the Third Transaction and Proposed Vesting Order sought in connection with same.

83. Schedule "B" to the Amended and Restated Second Option Notice contains a list of assets that are specifically excluded from the Third Transaction.

FUNDS GARNISHED FROM A TNW NETWORKS BANK ACCOUNT

Background

84. Following the April 6, 2017 Order, the Monitor assumed operational control of the assets and undertakings of the Petitioners and TNW, including two bank accounts maintained by TNW Networks to collect customer billings at the Bank of Montreal (the "**BMO Accounts**").

85. Paragraphs 47 to 62 of the Seventeenth Report describe that on April 17, 2018, 9151-4877 Quebec Inc. (dba Dialek) ("**9151**" or "**Dialek**") filed a Notice of Application in this CCAA proceeding (the "**Dialek Application**") in which it sought an Order directing the Monitor to pay the monies in the BMO Accounts to 9151-4877. Dialek is one of the Claiming Persons related to Mr. Laliberte.

86. At the time, the Monitor noted that other parties including the Petitioners, NCL, and the BCE Group also asserted an interest in the funds in the BMO Accounts and advised this Honourable Court that it required a Court Order to approve the release of the funds in the BMO Accounts. Attached hereto as **Appendix "L"** is

a letter from legal counsel the BCE Group, which asserts an interest in these monies.

87. At a hearing on April 19, 2018, Mr. Justice Affleck noted that the motion was too complicated and time consuming to hear that day and also that proper notice needed to be given to the Service List.

88. Dialek never re-set a hearing date to consider the Dialek Application which was filed more than three years ago. The Monitor notes that the Injunction Application heard by Mr. Justice Sewell (described above) overlapped with the Dialek Application, but Dialek did not seek the same relief.

89. Paragraph 18 of the Oral Ruling of Justice Sewell on the Injunction Application notes:

> *….On April 17, 2018, a number of Claiming Parties delivered an application for payment of the funds held in respect of the released customers to Gregory & Gregory in trust for Dialek. Argument on that motion commenced on April 19, 2018, but could not be completed before Justice Affleck. That application remains outstanding.*

90. For approximately three years, the BMO Accounts remained under the operation and control of the Monitor without any interference, pending an application for a Distribution Order once the litigation described above concluded.

Garnishment of the BMO Accounts

91. On or about May 11, 2021, the Monitor discovered that $188,995 had been garnished from one of the BMO Accounts (the "**Garnished Funds**"). Upon inquiry, the Monitor was directed to the Sheriff's office in Toronto that confirmed that it was holding the Garnished Funds in accordance with a Notice of Garnishment pronounced by the Ontario Superior Court. The Sheriff then directed the Monitor to the law firm in Toronto that represented the Plaintiff that obtained the Notice of Garnishment.

92. Following investigations, the Monitor now knows the following facts to be true:

(a) the Plaintiff who obtained the Notice of Garnishment was 9064-6043 Quebec Inc. ("**9064**");

(b) the Monitor has grounds to believe, as described in further detail below, that 9064 is a related party to the Claiming Persons, Dialek and Mr. Laliberte;

(c) 9064 had knowledge of this CCAA proceeding because it retained British Columbia counsel, submitted evidence, and made submissions in this proceeding;

(d) despite a Stay of Proceedings that applied to TNW Networks, 9064 commenced an action in 2017 against TNW Networks in the Quebec Superior Court of Justice (the "**Quebec Action**");

(e) 9064 did not:

(i) seek or obtain the consent of the Monitor or leave of this Honourable Court prior to commencing the Quebec Action; or

(ii) serve the Monitor with any of the materials in the Quebec Action despite the Monitor being granted receiver-like powers over TNW Networks in the April 6, 2017 Order;

(f) on or about March 4, 2020, despite the Stay, 9064 obtained default judgment in the Quebec Action (the "**Quebec Judgment**");

(g) despite the Stay, on or about November 24, 2020, 9064 commenced an enforcement action against TNW Networks to enforce the Quebec Judgment in Ontario (the "**Ontario Action**");

(h) 9064 did not:

(i) seek or obtain the consent of the Monitor or leave of this Honourable Court prior to commencing the Ontario Action;

(ii) serve the Monitor with any of the materials in the Ontario Action despite being granted receiver-like powers over TNW Networks; or

(iii) serve or otherwise provide the Monitor with the Statement of Claim in the Ontario Action;

(i) service of TNW Networks with the Ontario Action was made upon someone named Jocelyn Bievence, of whom the Monitor has no knowledge;

(j) on or about January 19, 2021, TNW Networks was noted in default in the Ontario Action on requisition from 9064;

(k) on March 24, 2021, a default judgment order was made by the Ontario Superior Court following an *ex parte* motion in writing by 9064, granting judgment against TNW Networks in the amount of $1,019,985 plus pre-judgment interest as provided for in the Quebec Judgment (the "**Ontario Default Judgment**");

(l) the Monitor was not given notice of 9064's motion for default judgment;

(m) on or about April 29, 2021, the Ontario Superior Court issued a Notice of Garnishment to the Bank of Montreal in the amount of $1,022,031, seeking to garnish BMO Accounts to satisfy the Default Judgment Order; and

(n) on or about May 11, 2021, the sum of $188,995 was garnished from the BMO Accounts in accordance with the Notice of Garnishment.

93. On June 10, 2020, the Sheriff's office in Toronto advised the Monitor that the Garnished Funds would be released to 9064 within ten days, absent a Court Order setting aside the garnishment.

94. On June 11, 2020, Miller Thomson filed a Notice of Motion in the Ontario Superior Court to set aside the default judgment. A copy of the Notice of Motion

is attached hereto as **Appendix "M"**. A case conference is scheduled for August 17, 2021, to set a date for the hearing of the motion.

95. Miller Thomson is also taking steps in the Quebec Superior Court to set aside the Quebec Judgment.

96. The Sheriff's office in Toronto has confirmed that it will retain the Garnished Funds pending the outcome of these motions.

9064-6043 Quebec Inc.

97. The Monitor has described in its previous reports that the Petitioners did not employ any personnel directly. Early in these proceedings, Mr. Laliberte asserted that the Petitioners and TNW Networks contracted for the services of the Business' personnel from 9064 (which operates as IT&T Canada ("**ITTC**") pursuant to a Human Resource Services Agreement (the "**9064 HRSA**"). Mr. Laliberte provided the Monitor with a copy of the 9064 HRSA on June 29, 2017, after numerous requests by the Monitor following its appointment on December 21, 2016.

98. Mr. Laliberte advised the Monitor that 9064 was an arm's length entity to the Petitioners owned by Ms. Europe Mourani, an individual with whom he had a long standing business relationship.

99. A copy of a corporate search provided to the Monitor by the Executive Management Team as of November 29, 2016 (attached as **Appendix "N"**) listed Mr. Laliberte as a director and officer of 9064. In a subsequent search obtained on December 30, 2016, Mr. Laliberte was no longer listed as a director and officer of 9064 (attached as **Appendix "O"**). Ms. Mourani was listed in Mr. Laliberte's place.

100. Mr. Laliberte also wrote to a representative of the Monitor on April 19, 2017, to confirm that he was the person to coordinate matters for ITTC's staff. A copy of this email is attached hereto as **Appendix "P"**.

101. Paragraphs 132 to 140 of the Twelfth Report dated August 28, 2017 describe 9064's initial engagement in this CCAA proceeding.

102. Paragraphs 59 to 92 of the Fifteenth Report describe the history of the Petitioners' employment of personnel and the unusual staffing arrangement created by Mr. Laliberte that raised the concern of the CRA. In particular, the Monitor noted that corporate affiliates of Mr. Laliberte acquired the Petitioners in 2012 and payroll for the personnel employed in the Business was processed under a number of entities thereafter until January 1, 2016, when payroll for the personnel of the Business (outside of British Columbia) started to be processed under 9064.

103. The Executive Management Team advised the Monitor that Mr. Laliberte had instructed the Petitioners' finance department to begin processing payroll for British Columbia personnel under ITTC and that this first occurred in December, 2016, after the commencement of these CCAA proceedings and prior to December 21, 2016, when EYI was substituted as Monitor.

104. On September 11, 2017, Ms. Mourani filed an affidavit on behalf of ITTC in this CCAA proceeding (the "**Mourani Affidavit**") in which she described ITTC as a provider of professional consulting services in the field of telecommunication and informational technology to TNW Networks. A copy of the Mourani Affidavit is attached hereto as **Appendix "Q"**.

105. On November 16, 2017, legal counsel for ITTC, Sodagar & Company Law Corporation ("**Sodagar**"), wrote to counsel for the Monitor (Miller Thomson) to:

(a) demand payment of $1,019,985 (the exact amount sought and granted by default under the Quebec Judgment) by November 20, 2017, in respect of outstanding invoices, purportedly for the wages paid to personnel of the Business and services charges owing to ITTC; and

(b) advise that if the payment was not tendered as demanded, ITTC "may terminate employees and seek such judicial relief as is available in the outstanding CCAA proceedings."

106. A copy of the above-noted correspondence is attached hereto as **Appendix "R"**.

107. On November 17, 2017, Miller Thomson wrote Sodagar to:

(a) deny that any employees of the Business that is subject to the Monitor's court-appointed jurisdiction are unpaid;

(b) advise that the Monitor had explained in the Seventh and Twelfth reports to this Honourable Court the arrangements through which the employees had been retained and paid;

(c) advise of the various orders that have been made in this CCAA proceeding which affect the ability of third parties to exercise remedies against, *inter alia*, TNW Networks; and

(d) cautioned that any interference by ITTC with the business operations of the companies that are subject to these CCAA proceedings could constitute a breach of the orders of this Honourable Court.

108. A copy of the above correspondence from Miller Thomson is attached hereto as **Appendix "S"**.

109. For clarity, the Monitor did and does not agree that any amounts are owing by the Petitioners to 9064/ITTC. 9064 never properly sought relief from this Honourable Court in this CCAA proceeding. Instead, it commenced an action against TNW Networks in the Quebec Superior Court without proper or effective notice to the Monitor or to any of the parties to this CCAA proceeding.

110. The Monitor and Miller Thomson must now expend considerable time and resources of the Petitioners to deal with these actions, including the obtaining of orders in the Ontario Superior Court and the Quebec Superior Court to freeze and retrieve the Garnished Funds.

111. On June 30, 2021, a case conference hearing was held in the Ontario Superior Court of Justice before Mr. Justice Myers in Toronto to schedule the hearing of the Notice of Motion (attached as Exhibit K) to set aside the Ontario Default Judgment and to have the Garnished Funds repaid to TNW Networks. However, immediately prior to the hearing, 9064 terminated its lawyers, Powell Litigation, which resulted in an adjournment of the case conference to August 17, 2021, on

terms that the garnishment remains stayed and the Sheriff shall continue to hold the Garnished Funds pending further order of the court. A copy of the Endorsement of Mr. Justice Myers is attached hereto as **Appendix "T"**.

112. The timeline for completion of the Monitor's efforts to set aside the Ontario Default Judgment and the Quebec Judgment is unpredictable, but it will almost certainly take several months. Therefore, the Monitor will require from this Honourable Court an order granting the Monitor residual authority following its discharge to deal the performance of such incidental duties as may be required to complete the administration of this CCAA proceding, including the retrieval and distribution of the Garnished Funds.

THE PROPOSED DISTRIBUTION

113. The Monitor is in possession of the "**Available Funds**" summarized below for distribution to the Chargeholders:

Assets available for Distribution		
Net Cash on Hand	737,500	(1)
Receivable on First Option Notice	331,188	(2)
Third Transaction Proceeds	503,382	(3)
	1,572,070	
Add:		
Garnished Funds held by the Ontario Sherriff	189,000	
USD funds in TNW Cash Account	1,440	
	190,440	
Less:		
Reserve for Completion Costs	(150,000)	
Amount to be set-off by NCL	(117,994)	(4)
	(267,994)	
Net assets available for Distribution	**1,494,516**	
Proposed Distribution		
Payroll withholdings owing to Revenu Quebec	151,073	(4)
Network Providers Charge	325,000	(4)
DIP Lender	1,018,443	(4)
	1,494,516	

(1) Net transaction proceeds held by the Monitor on behalf of the Petitioners after deducting professional and other costs in administering the within CCAA Proceedings and other transitional costs.

(2) Residual amount owing on the Promissory Note in connection with the assets acquired by NCL pursuant to the Vesting Orders.

(3) The amount conditionally proposed by NCL to the Monitor, in consultation with the Chargeholders, that would be payable by NCL should this Honourable Court approve the Third Transaction.

(4) Discussed in detail below.

Amount Payable to NCL for use of the NCL Network

114. Paragraphs 63 to 72 of the Sixteenth Report describe how, in early May 2018, NCL discovered that the Claiming Persons continued to leverage the network and infrastructure assets that NCL acquired by virtue of the Vesting Orders (the "**NCL Network**") to provide services in respect of assets that NCL opted not to acquire and that the Monitor released to the Claiming Persons.

115. In effect, the Claiming Persons enjoyed the benefit and services of the NCL Network without paying compensation.

116. Attached hereto as **Appendix "U"** are copies of an invoice prepared by NCL for the services derived by the Claiming Persons in the amount of $117,994, which provides details of those charges. The Monitor is advised that the invoice was prepared using NCL's preferred wholesale rates.

117. NCL and the Monitor have agreed that the $117,994 owed by the Claiming Persons may be set off by NCL against the amount to be paid by NCL in the Third Transaction.

Payroll Withholdings owing to Revenu Quebec on behalf of 9064/ITTC

118. Paragraphs 80 to 86 of the Seventh Report describe that shortly after this Honourable Court pronounced the April 6, 2017 Order, which granted the Monitor receiver-like powers, the Monitor met with representatives of CRA to discuss the

processing of payroll for personnel of the Business that were purportedly contracted through 9064/ITTC.

119. The CRA expressed its concern to the Monitor that there was a real and substantial risk that funds advanced by the Petitioners to 9064 to fund payroll would not be used to pay personnel and that the necessary statutory deductions would not be remitted to the CRA. Accordingly, CRA requested that the Monitor process payroll on behalf of the Petitioners and remit source deductions on behalf of the 9064 directly to the CRA.

120. The Monitor agreed to comply with the CRA's request on the terms described in paragraph 81 of the Seventh Report.

121. The Monitor also explained in the Seventh Report that it had deducted and retained tax withholdings from payroll payments to personnel in Quebec and was holding those funds in trust for Revenu Quebec. The funds were held in trust because the Monitor, at that point in time, was unable to find an appropriate point of contact at Revenu Quebec with whom to reach an agreement on a method for remitting such amounts.

122. The Monitor continues to hold unremitted payroll source deductions payable to Revenu Quebec in the amount $151,072.

123. However, given that other parties, including 9064, have asserted an interest in these funds, the Monitor determined and advised Revenu Quebec that it required a Court order to approve the release of these monies to Revenu Quebec.

124. On July 26, 2019, Revenu Quebec assessed EYI to be personally liable in the amount of $192,149.50, plus ongoing interest, being the amount determined by Revenu Quebec that 9064 should have paid as payroll tax remittances. As of February 2021, Revenu Quebec has withheld tax refunds payable to EYI with respect to unrelated business activity in Quebec for the 2019 and 2020 tax years. Attached as **Appendix "V"** are copies of the July 26, 2019 Notice of Assesssment and a letter and statement of account from Revenu Quebec to EYI dated February 22, 2021.

125. On June 21, 2021, Miller Thomson wrote Revenu Quebec to advise of the Monitor's position that the Orders made by this Honourable Court in this CCAA proceedings take constitutional priority and prohibit Revenu Quebec from making a statutory assessment and execution against EYI's personal assets. A copy of this letter is attached hereto as **Appendix "W"**

126. Concurrent with the proposed distribution to Revenu Quebec, the Monitor seeks an order, similar to the terms agreed upon with CRA, declaring that the distribution to Revenu Quebec:

(a) does not create any legal relationship between the Monitor and 9064-6043 Quebec Inc's employees or between the Petitioners and 9064-6043 Quebec Inc's employees;

(b) does not create or otherwise raise for the Monitor any obligations or liabilities to 9064-6043 Quebec Inc's employees; and

(c) extinguishes any liability that EYI may have in its personal capacity to Revenu Quebec with respect to this matter.

127. The Monitor also seeks a declaration that Revenu Quebec's July 26, 2019, statutory assessment and subsequent execution against the Monitor's (EYI's) personal assets contravened the protections and immunities granted to the Monitor by the April 6, 2017 Order.

Network Providers' Charge

128. As noted above, this Honourable Court ordered a Network Providers' Charge in the amount of $890,000 as security for the provision of ongoing telecommunications services provided by Telus and Bell for resale by the Petitioners.

129. To avoid further disputes in this matter and resolve matters amicably, Telus and Bell have agreed to support a distribution of the $325,000 on account of the Network Providers' Charge which represents a 37% recovery on the amount to which they otherwise would be entitled.

130. The Monitor is advised that the Network Providers' consent is conditional upon this Honourable Court pronouncing a Distribution Order which resolves and completes all matters relating to the Revised Distributel APA on the financial basis outlined above.

DIP Lender

131. As is noted above, the DIP Lender maintains the DIP Lender's Charge and the Monitor's Borrowing Charge in the aggregate amount of $3,103,000.

132. The Monitor proposes that any amount that remains after the proposed distributions to Revenu Quebec, the Network Providers, and costs to complete the administration of this CCAA proceeding, will be paid to the DIP Lender.

133. The Monitor currently estimates that the DIP Lender will receive approximately $1 million, which would represent a $2,103,000 shortfall on their court-approved security.

PROFESSIONAL FEES AND DISBURSEMENTS

The Original Monitor and Watson Goepel

134. The fees of the Original Monitor (Boale Wood) for the period of November 16, 2017 to December 30, 2017 are summarized below.

Boale Wood - CCAA						
Invoice #	**Date**	**Period Covered**	**Fees**	**Disb.**	**Subtotal**	**Hours**
10069	10-Jan-17	Nov 16, 2017 - Dec 30, 2017	75,438	1,714	77,152	240
Subtotal			**75,438**	**1,714**	**77,152**	**240**

135. The Original Monitor retained Watson Goepel LLP ("**Watson Goepel**") to represent it in this proceeding. The fees of the Watson Goepel for the period of November 16, 2017 to December 30, 2017 are summarized below.

Watson Goepel - CCAA / NOI						
Invoice #	**Date**	**Period Covered**	**Fees**	**Disb.**	**Subtotal**	**Hours**
128751	23-Nov-16	Nov 17, 2017 - Nov 23, 2017	12,070	271	12,341	
128901	01-Dec-16	Nov 17, 2017 - Nov 30, 2017	6,825	1,045	7,870	
129419	12-Jan-16	Dec 1, 2017 - Dec 23, 2017	31,415	2,356	33,771	
Subtotal			**50,310**	**3,672**	**53,982**	

136. Attached hereto as **Appendix "X"** are copies of the invoices for the Boale Wood and Watson Goepel.

The fees of EYI and Counsel described in the Eight Report

137. In paragraphs 100 to 110 of its Eighth Report dated July 7, 2017, the Monitor sought the approval of:

(a) the fees and disbursements of the Monitor for the period of December 21, 2016 to June 2, 2017;

(b) the fees and disbursements of McCarthy Tetrault LLP, who was then retained as counsel by the Monitor, for the period of December 21, 2016 to May 30, 2017; and

(c) MLT Aikins LLP who was retained by the Monitor as agent counsel to review the validity and enforceability of a number of Secured Claims filed in connection with the Claims Process approved by this Honourable Court.

138. The Monitor's motion to approve the fees described above was adjourned in July 2017 given the contested (and at times chaotic) nature of this CCAA proceeding and this Honourable Court's availability to hear this and other non-urgent motions. The Monitor notes that nearly every motion made in this CCAA proceeding has been contested, primarily by the Claiming Persons and Mr. Laliberte. As the Monitor notes above, there have been approximately 100 days of hearings before this Honourable Court and the Court of Appeal.

139. The Monitor is seeking the approval of the professional fees and disbursements described in paragraphs 100 to 110 of its Eighth Report, given that the litigation of all matters directly raised within this CCAA proceeding has now concluded.

The fees of EYI and Counsel since the Eight Report

140. The Monitor's fees and disbursements for the period from June 3, 2017 to June 30, 2020 are summarized below:

EYI - CCAA						
Invoice #	**Date**	**Period Covered**	**Fees**	**Disb.**	**Subtotal**	**Hours**
CA12C500002038	21-Sep-17	June 3-30, 2017	94,307	371	94,677	214.1
CA12C500002708	10-Apr-18	Jul 1-31, 2017	106,085	-	106,085	239.1
CA12C500002709	10-Apr-18	Aug 1-31, 2017	144,171	-	144,171	290.6
CA12C500002710	11-Apr-18	Sep 1-8, 2017	35,632	-	35,632	73.4
CA12C500002925	22-Jun-18	Sep 9-30, 2017	75,345	-	75,345	151.2
CA12C500002926	22-Jun-18	Oct 1-31, 2017	119,738	1,585	121,322	234.8
CA12C500002927	22-Jun-18	Nov 1-30, 2017	53,154	-	53,154	113.7
CA12C500002928	22-Jun-18	Dec 1-31, 2017	47,927	1,267	49,194	103.0
CA12C500003464	23-Jan-19	Jan 1, 2018 - Dec 31, 2018	148,392	119	148,511	366.1
CA12C500005374	07-Jul-20	Jan 1, 2019 - Jun 19, 2020	167,500	247	167,747	301.1
Subtotal			**992,250**	**3,588**	**995,838**	**2,087**

141. The activities of the Monitor during this period are well documented in the Ninth to Nineteenth Reports prepared for this Honourable Court. A summary of the main activities completed by the Monitor is provided below:

(a) management of the Petitioners in accordance with the April 6, 2017 Order;

(b) frequent discussions with:

(i) legal counsel to the Network Providers and the Network Providers directly; and

(ii) the DIP Lender;

(c) preparation for and attendance of numerous court applications;

(d) the administration of the Solicitation Process that resulted in the Original Distributel APA;

(e) response to and attendance upon the First Appeal;

(f) negotiations and implementation of the Revised Distributel APA, the Vesting Orders and Transition Services Agreement with respect to management of the Disputed Assets by NCL;

(g) administration of the Disputed Property Claims Process;

(h) response to and attendance upon the Second Appeal, the Third Appeal and the application for leave to appeal to the Supreme Court of Canada;

(i) various attempts to settle matters with the Claiming Persons;

(j) response to and reporting on the Injunction Application;

(k) response to and reporting on the Monitor Replacement Application; and

(l) various other matters including relief sought with respect to the 9064 staffing arrangement described above.

142. Copies of the cover pages to each of the Monitor's invoices noted above together with the hours worked by professional and hourly rates are attached hereto as **Appendix "Y"**.

143. The work completed by the Monitor was delegated to the appropriate professionals in the Monitor's organization based on seniority and hourly rates. The Monitor's fees are consistent with the fees charged by similar firms in British Columbia with the capacity to handle a file of comparable size and complexity.

144. The Monitor also notes that it did not charge most of the hours it worked after rendering the Proofs of Claim Disallowance in the Disputed Property Claims Process in order to allow the retention of estate funds for the benefit of other Chargeholders, resulting in a material imbedded discount to the amount charged.

145. As noted above, McCarthy Tetrault represented the Monitor in this CCAA proceeding until approximately August 31, 2017. McCarthy Tetrault's fees and disbursements for the period from June 1 to August 31, 2021 are summarized below:

McCarthy Tetrault LLP

Invoice #	Date	Period Covered	Fees	Disb.	Subtotal	Hours
2395928	23-Nov-16	June 1, 2017 to July 31, 2017	278,738	1,451	280,189	486
2399303	12-Sep-16	Aug 1, 2017 to Aug 31, 2017	165,864	5,423	171,287	287
Subtotal			**444,602**	**6,874**	**451,476**	**772**
Fees and disb. summarized in the Eight Report			206,436	1,280	207,716	347
Less: Courtesy Discount					**(239,401)**	
Subtotal after Discount					**419,791**	

146. The Monitor notes that McCarthy Tetrault has provided the Petitioners with a material discount of approximately 35% of total gross billings (before taxes) in order to accommodate a greater recovery for the other Chargeholders.

147. The Monitor has reviewed all accounts rendered by McCarthy Tetrault in this period and confirms that all services described in the McCarthy accounts were rendered to the Monitor by McCarthy, and that the Monitor believes that all charges in the accounts are fair, reasonable and consistent with the market for such legal services in British Columbia.

148. As noted above, Miller Thomson has represented the Monitor in this CCAA proceeding since approximately August 31, 2017. Miller Thomson's fees and disbursements for the period from June 1 to June 30, 2021 are summarized below:

Miller Thomson - CCAA

Invoice #	Date	Period Covered	Fees	Disb.	Subtotal	Hours
3086230	15-Sep-17	,Aug 30, 2017 to Sep 15, 2017	49,987	44	50,031	95.0
3093447	30-Sep-17	Sep 18, 2017 to Sep 30, 2017	56,057	518	56,575	118.6
3104748	31-Oct-17	Sept 30, 2017 to Oct 31, 2017	31,237	18	31,419	70.9
3116916	30-Nov-17	Nov 1, 2017 to Nov 29, 2017	39,586	567	40,152	77.1
3129334	31-Dec-17	Nov 29 to Dec 29, 2017	83,636	216	83,851	165.6
3147067	31-Jan-18	Jan 2, 2018 to Jan 30, 2018	64,590	112	64,702	139.1
3157905	28-Feb-18	Jan 18, 2018 to Feb 27, 2018	16,093	222	16,314	29.8
3169613	31-Mar-18	Feb 28, 2018 to Mar 29, 2018	23,856	113	23,969	48.7
3179243	30-Apr-18	Mar 29, 2018 to April 30, 2018	12,980	289	13,269	27.2
3190177	31-May-18	April 11, 2018 to May 31, 2018	27,868	79	27,946	62.1
3204838	30-Jun-18	Jun 1, 2018 to June 21, 2018	16,845	266	17,111	41.6
3215343	31-Jul-18	Jun 18, 2018 to Jul 27, 2018	7,810	-	7,810	17.2
3226953	31-Aug-18	Jul 31, 2018 to Aug 31, 2018	47,048	170	47,218	96.5
3249898	31-Oct-18	Sept 4, 2018 to Oct 1, 2018	2,653	17	2,669	5.1
3275438	31-Dec-18	Nov 11, 2018 to Dec 7, 2018	828	105	932	2.1
3294604	31-Jan-19	Jan 7, 2019 to Jan 31, 2019	6,993	24	7,017	12.7
3306254	28-Feb-19	Feb 4, 2019 to Feb 28, 2019	20,360	0	20,360	44.6
3316907	31-Mar-19	Mar 1, 2019 to Mar 11, 2019	10,802	57	10,859	18.5
3343881	31-May-19	Mar 12, 2019 to May 30, 2019	15,793	97	15,889	32.9
3367421	31-Jul-19	May 27, 2019 to Jul 31, 2019	9,777	-	9,777	21.6
3377927	31-Aug-19	Aug 1, 2019 to Aug 31, 2019	42,118	22	42,140	96.5
3389249	30-Sep-19	Sep 1, 2019 to Sep 30, 2019	14,571	123	14,694	37.3
3403158	31-Oct-19	Oct 1, 2019 to Oct 31, 2019	26,850	20	26,870	46.2

3425128	31-Dec-19	Nov 1, 2019 to Dec 31, 2019	6,625	135	6,760	10.6
3443233	31-Jan-20	Jan 1, 2020 to Jan 31, 2020	5,940	-	5,940	11.2
3453442	29-Feb-20	Feb 1, 2020 to Feb 29, 2020	2,310	169	2,479	3.5
3470119	31-Mar-20	Mar 1, 2020 to Mar 31, 2020	16,156	19	16,175	26.1
3478461	30-Apr-20	Apr 1, 2020 to Apr 30, 2020	12,518	101	12,619	21.3
3486378	31-May-20	May 1, 2020 to May 31, 2020	1,716	-	1,716	2.6
3499960	30-Jun-20	Jun 1, 2020 to Jun 30, 2020	726	-	726	1.1
3512300	31-Jul-20	Jul 1, 2020 to Jul 31, 2020	2,442	-	2,442	3.7
3531940	30-Sep-20	Jul 1, 2020 to Sep 30, 2020	3,300	-	3,300	5.0
3559285	30-Nov-20	Oct 1, 2020 to Nov 30, 2020	990	139	1,129	1.5
3583399	31-Jan-21	Dec 1, 2020 to Jan 31, 2021	882	-	882	1.4
3609526	31-Mar-21	Feb 1, 2020 to Mar 31, 2021	1,260	-	1,260	2.1
3639761	30-Jun-21	Apr 1, 2021 to Jun 30, 2021	33,459	-	33,459	63.7
Subtotal			**716,656**	**3,802**	**720,458**	**1,461**

149. The Monitor has reviewed all accounts rendered by Miller Thomson in this period and confirms that all services described in the Miller Thomson accounts were rendered to the Monitor by Miller Thomson, and that the Monitor believes that all charges in the accounts are fair, reasonable and consistent with the market for such legal services in British Columbia.

150. The Monitor requests this Honourable Court approve the fees and disbursements of the Original Monitor, Watson Goepel, McCarthy Tetrault and Miller Thomson.

151. The Monitor and Miller Thomson intend to include their final invoices and their estimated fees to conclusion in a forthcoming supplement to this Nineteenth Report.

CONCLUSION OF THE CCAA PROCEEDINGS AND DISCHARGE OF THE MONITOR

152. This CCAA proceeding was commenced in 2016 and it has been long and complex, requiring considerable time and resources before this Honourable Court.

153. The introductory section of this Nineteenth Report provides only a high level summary of the various issues that arose in these proceedings. A detailed description of all issues is described in the first eighteen reports of the Monitor.

154. The Monitor notes that it is unfortunate that the cost and time of the extensive litigation that was required to resolve this CCAA proceeding eroded the recovery to stakeholders. The Monitor also notes that many of the parties actively involved in this proceeding, including the professionals, the Network Providers, and the DIP Lender, shared in the financial hardship necessary to bring this matter to a conclusion.

155. The previous reports of the Monitor describe how the Business of the Petitioners was severely impaired due to customer attrition resulting from the high profile and contentious nature of these proceedings. However, the Monitor notes that the Revised Distributel APA has allowed for: (a) a preservation of the Business, (b) the continued employment of approximately 50 personnel, primarily based in British Columbia, and (c) some recovery to the Chargeholders.

156. Accordingly, should this Honourable Court see fit to grant the relief sought herein, the Monitor believes that it is appropriate to terminate this CCCA proceeding.

157. The Monitor proposes that this Honourable Court grant orders discharging the Monitor in this CCAA proceeding, subject to the residual powers necessary for the performance of such incidental duties as may be required to complete the administration of this CCAA proceeding and to deal with the issue of the Garnished Funds.

158. Moreover, the Monitor notes that Mr. Laliberte has threatened to commence legal proceedings against the Monitor, individual representatives of the Monitor in their personal capacity, and NCL, with respect to matters falling under the jurisdiction of this CCAA proceeding. Mr. Laliberte also filed a voluminous complaint against the Monitor with the Office of the Superintendent of Bankruptcy Canada, the regulator which regulates the conduct of the Monitor.

159. On January 17, 2019, an entity called United American Corp., which is related to Mr. Laliberte, issued a press release which described the Petitioners' parent company, Investel Capital Corp. ("**Investel**"), as having some displeasure with the outcome of these proceedings and asserted that Investel was in the process

of assessing the level of its damages which it alleges were caused by the Monitor. A copy of the press release is attached hereto as **Appendix "Z"**.

160. In light of these threats, and the propensity of Mr. Laliberte to commence legal proceedings through the entities that he controls, the Monitor is seeking broad releases of the Monitor, EYI, and NCL with respect to all conduct in this CCAA proceeding, including all activity related to the sale of assets to NCL.

MONITOR'S COMMENTARY

161. For the reasons stated herein, the Monitor respectfully recommends that this Honourable Court grant the relief sought in its Notice of Application filed concurrenty with this Report.

All of which is respectfully submitted this 9th day of August, 2021.

ERNST & YOUNG INC.
in its capacity as Court Appointed Monitor
of 8640025 Canada Inc. dba Teliphone Navigata-Westel
Communication Inc., Teliphone Data Centers Inc.,
and Teliphone Canada Corp.
Per:

Mike Bell, CPA, CA, CIRP, LIT
Senior Vice President

APPENDIX A

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *8640025 Canada Inc. v. TELUS Communications Company,* 2016 BCSC 2211

Date: 20161125
Docket: S1610194
Registry: Vancouver

Between:

8640025 Canada Inc.

Plaintiff

And

TELUS Communications Company

Defendant

Sealing order made on November 14, 2016, sealing some of the Affidavits filed until further court order.

Before: The Honourable Madam Justice Fisher

Reasons for Judgment

Counsel for the plaintiff:	S. Batkin P.E. Waldkirch
Counsel for the defendant:	B.J. Greenberg G. Cameron R.L. Coad
Place and Date of Hearing:	Vancouver, B.C. November 14, 16, 18, 2016
Place and Date of Judgment:	Vancouver, B.C. November 25, 2016

[1] The plaintiff, 8640025 Canada Inc. (864), made an application for an interlocutory injunction to restrain the defendant, TELUS Communications Company (Telus), from terminating telecommunication service agreements and all services provided under those agreements pursuant to a notice to terminate to be effective November 21, 2016. The application was heard November 14, 16 and 18, 2016. Because of the urgency of the matter, I made an order at the conclusion of the hearing, refusing to grant the injunction, with reasons to follow. These are my reasons.

Background

The parties

[2] 864 is a federal company in the telecommunications business. Formerly known as Teliphone Navigata-Westel Communication Inc. (TNW), 864 was owned by Teliphone Corp. until January 1, 2014 and thereafter by Investel Capital Corporation. Benoit Laliberte was the Chief Executive Officer of 864 and the President of Teliphone until August 2014 and thereafter has been an advisor and consultant to 864. He is also the Managing Director of Investel.

[3] 864 is a Competitive Local Exchange Carrier (CLEC) which operates in competition with Incumbent Local Exchange Carriers (ILECs) and other CLECs. ILECs are companies that operated as a monopoly before the Canadian Radio-Television and Telecommunications Commission (CRTC) opened the market to local competition in 1998. Telus operates as an ILEC in British Columbia and Alberta and a CLEC in the rest of Canada. As an ILEC, Telus operates both wholesale and retail divisions. Telus Wholesale sells services to Telus' competitors and Telus Retail sells services to the same customers as its competitors.

[4] 864 has been a purchaser of Telus Wholesale services for many years. Under a series of service agreements, Telus agreed to provide 864 with data, network and other communications services and 864 agreed to pay for these services as the charges became due. Since 2012, 864 has defaulted from time to

time on its obligation to pay for these services, to the extent that Telus now claims amounts owing as of September 30, 2016 of over $9 million.

864's debts to Telus

[5] 864's debt to Telus relates to service agreements and an obligation it took on in November 2012 when it acquired the assets of a company called Navigata Communications 2009 Inc. (later known as Cascade Divide Enterprises, Inc.). At that time, Cascade was indebted to Telus under service agreements for approximately $2.6 million. In a November 30, 2012 Assignment, Assumption, Repayment and Guarantee Agreement (AARGA), Telus approved an assignment to 864 of Cascade's service agreements and $1,925,111 as an agreed amount for Cascade's existing debt (referred to as the Legacy Obligation). Teliphone guaranteed 864's obligations and provided a convertible debenture, for a face value of $1,925,111, as security for the guarantee. The service agreements assigned to 864 in this transaction are the agreements under which it has since fallen into arrears. I will refer to them as the Service Agreements.

[6] After 864 fell behind in its payments to Telus under the Service Agreements and the Legacy Obligation, Telus took numerous steps to deal with the problem. 864 often promised to make the payments required, claiming that it was about to obtain a large credit or financing, and payments were sometimes made on 864's behalf by Teliphone and other related entities. However, cheques were often returned for insufficient funds and the shortfalls continued. By the end of 2013, Telus demanded that 864 make material payments and provide a plan to reduce the arrears. 864 continued to make promises to pay that did not materialize. From April 2014 to September 2015, Telus made repeated efforts to demand payment and negotiate a settlement that would permit 864 to pay the amounts owing in an orderly way, and expressly reserved its right to terminate the Service Agreements. By March 2015, Telus recorded debt owing by 864 in the amount of $6,256,732 CDN, which included $1,280,118 for the Legacy Obligation, and $539,323 USD.

The Target acquisition and settlement of 864's debt

[7] Around this time, early 2015, 864 became interested in acquiring another communications company, referred to in these proceedings as the Target. 864 wanted to acquire the Target's customers and service contracts with Telus and most importantly, the Target's wireless spectrum licence (AWS Licence). The AWS Licence would allow 864 to become a registered wireless carrier using a new technology. On July 10, 2015, the Target, 864 and "A New Canadian Corporation" to be incorporated and owned by Investel entered into a non-binding letter of intent whereby the new Investel-owned company would purchase the Target's assets.

[8] The Target's service agreements with Telus could only be assigned with Telus' consent, and the Target was also indebted to Telus, for over $2 million. Mr. Laliberte had discussions about 864's strategic plan in respect of this acquisition with Telus' then Vice President Sales and Marketing, Hanif Datoo. In these discussions, Mr. Laliberte disclosed confidential information to Mr. Datoo about 864's technology and marketing plan.

[9] There is much dispute in the evidence about what Telus's position was with respect to approving the assignment of the Target's service agreements. Mr. Laliberte deposed that Mr. Datoo was supportive of the acquisition and on August 7, 2015 advised that Telus would approve the assignment if 864 entered into a settlement agreement in respect of its outstanding accounts. Mr. Datoo deposed that he repeatedly advised Mr. Laliberte that the debts of both 864 and the Target had to be addressed before he would consider any assignment.

[10] On August 12, 2015, Telus' Credit Strategy Manager, Gary Budd, forwarded to 864 a draft settlement agreement. When 864 did not respond to this, on September 4, 2015, Mr. Budd sent a demand letter to 864 for immediate payment of $3,000,000 towards an overdue outstanding amount of $4,544,521. Subsequently, there were discussions between Mr. Budd and Mr. Laliberte, which resulted in a revised settlement agreement that 864 signed on September 14, 2015 (the Settlement Agreement). In the Settlement Agreement, 864 agreed to make

additional payments towards overdue account receivables, specific payments towards an undisputed overdue balance of approximately $4,151,574, and a process was set out for settling disputed overdue balances.

[11] 864 says that it needed this acquisition in order to pay its outstanding debt to Telus and the Settlement Agreement was subject to the condition that Telus would approve the assignment of the Target's service agreements and the settlement of the Target's debt on terms substantially similar to what was contained in agreements that were delivered to the Target by Telus (the Settlement Condition). 864 further says that Telus knew that its ability to meet the commitments made in the Settlement Agreement were contingent on Telus complying with this condition.

[12] Telus disputes this, saying the settlement of 864's debt issue was a separate matter from the assignment of the Target's service agreements.

[13] On September 17, 2015, 864 made a $100,000 payment to Telus pursuant to the Settlement Agreement and Telus retracted the September 4, 2015 demand letter. 864 says that this payment was made in reliance on Telus' compliance with the Settlement Condition.

[14] Mr. Laliberte deposed that the following day, September 18, he learned for the first time that Mr. Datoo required the Target to transfer its AWS Licence to Telus as a condition of settling the Target's debt. 864 was very concerned, as the AWS Licence was a key component to 864's strategic plan. The evidence about this is also in dispute. Mr. Datoo deposed that he advised Mr. Laliberte only that the Target's debt had to be addressed before Telus would consider approving the assignment and that one way to do this was for the Target to transfer the AWS Licence to Telus. In the days that followed, there were a number of discussions between Mr. Laliberte and Mr. Datoo, some of which were recorded by Mr. Laliberte. 864 says that this evidence confirms that Mr. Datoo made representations that Telus would approve the assignment of the Target's service agreements and would either give 864 a sub-licence or allow it to purchase the AWS Licence. Telus disputes this. Mr. Datoo deposed that he was trying to find a way for 864 to carry through with the

acquisition and suggested that the AWS Licence could be sub-licenced from Telus to 864, subject to approval by Industry Canada. He maintained that he advised Mr. Laliberte that he intended to settle the Target's debt one way or another before he would consider the assignment.

[15] On September 28, 2015, Mr. Laliberte received a copy of Telus' proposal to the Target, which included the transfer of the AWS Licence to Telus and Telus' commitment to sub-licence it to 864 once Industry Canada approved the purchase. There were further discussions between the parties after this, continuing to late 2015. However, in January 2016, the acquisition collapsed.

[16] 864 asserts that Telus continued to represent that it would approve the assignment and would provide it with the AWS Licence as a sub-licence, that it failed to do so, and that its failure prevented 864 from proceeding with the acquisition. Telus says that the acquisition did not complete because the Target, and ultimately 864, did not satisfy their debts to Telus, which was always a requirement before Telus would consider approving the proposal. Telus did, however, later (in April 2016) acquire the AWS Licence from the Target in satisfaction of its debt.

Telus legal action, notices of default and termination of services

[17] Meanwhile, 864 failed to make payments under the Settlement Agreement, and on January 15, 2016, Telus sent a demand letter to 864 regarding this default. On March 2, 2016, Telus filed a Notice of Civil Claim against 864 seeking judgment for debts owing under the Service Agreements and the Settlement Agreement. Telus obtained a consent judgment against 864 on August 24, 2016 in the amount of $241,095, which addressed some of the claims contained in the Notice of Civil Claim (which were in respect of dishonoured cheques). 864 has not paid this judgment.

[18] On March 7, 2016, Telus issued a default notice to 864 under the Service Agreements seeking the defaults to be remedied by June 6, 2016.

[19] On June 16, 2016, Telus issued a notice of termination of the Service Agreements to be effective August 17, 2016, based on breaches or defaults under

the Service Agreements and the Settlement Agreement. It calculated the total debt owing as of April 30, 2016 to be $8,221,963. Telus filed this letter with the CRTC, which directed 864 to provide 30 days' notice to its customers and Telus extended the termination date to September 16, 2016.

[20] On August 31, 2016, 864 made an application on an expedited basis to the CRTC seeking an extension of the termination notice for 180 days to allow it to notify its clients and a further 90 days following notification before disconnection. 864 did not challenge Telus' right to terminate. The CRTC considered the relief requested by 864 to be unreasonably long and on September 22, 2016, directed Telus not to commence disconnection services prior to November 21, 2016.

[21] On September 30, 2016, 864 applied to the CRTC to review and vary its September 22 decision and proposed to prepay Telus' services with bridge financing Investel had secured that would pay for services during a four-month period. The CRTC was not satisfied that there was a basis to vary its prior decision and on November 1, 2016, it confirmed the November 21, 2016 termination date. It also directed 864 to notify its customers no later than November 8, 2016.

Other proceedings against 864

[22] On October 28, 2016, Scotiabank issued a formal demand to 864 for payment and notice of intention to enforce security in respect of 864's indebtedness under its operating line of credit. The total amount claimed to be due and owing is $2,740,531.

[23] On November 3, 2016, Telus applied to this Court for a bankruptcy order against 864. This followed an unsuccessful attempt, in September 2016, to execute on the August 24, 2016 consent judgment.

864's claim against Telus

[24] On November 3, 2016, after a final, unsuccessful attempt to reach a settlement with Telus, 864 filed its Notice of Civil Claim in these proceedings.

[25] The focus of this claim stems from alleged misrepresentations by Telus in respect of the Target acquisition and breaches of the Settlement Condition. 864

alleges that Telus intentionally prevented it from being able to fulfil its obligations under the Service Agreements and the Settlement Agreement, wrongfully interfered with 864's economic interests by preventing completion of the Target acquisition and preventing 864 from entering into the wireless market, and acted in bad faith by using and exploiting 864's confidential information for its own use.

[26] 864 claims damages for breach of contract, breach of confidence, negligent misrepresentation, and breach of the duty of good faith. It seeks declarations that the Settlement Agreement was of no force and effect and that 864 is not in breach of the Service Agreements. In the alternative, it seeks a declaration that Telus does not have a right to terminate the Service Agreements and it seeks an order that Telus rescind the disconnection notice. 864 also seeks an interlocutory and permanent injunction enjoining Telus from soliciting its customers, disclosing 864's confidential information from Telus Wholesale to Telus Retail, and disconnecting services under the Service Agreements.

[27] The legal basis for the claim for breach of the Service Agreements arises from specific allegations related to a service disruption in August 2015, a failure to provide fiber access in early 2016, and a failure to provide certain tariff services in the summer of 2016; breaches of confidentiality obligations; and wrongfully issuing the disconnection notice. However, in the factual basis for the claim, 864 asserts that the disconnection and suspension notice were not properly issued and of no force and effect for three reasons: (a) the Settlement Agreement was of no force and effect due to Telus' breaches of the Settlement Condition; (b) "all or most" of the amount owed under the Service Agreements was converted to equity in Teliphone under the terms of the debenture provided as security for the Legacy Obligation; and (c) 864's inability to meet its obligations under the Service Agreements and alternatively the Settlement Agreement was due to the wrongful actions of Telus.

Interlocutory injunction

[28] 864 seeks an interlocutory injunction on terms that would require it to pay Telus first under the August 24, 2016 consent judgment and second in advance for

services on an ongoing basis. It says that it has secured financing under a Binding Memorandum of Understanding (MOU) with a new lender to fund this but such financing is contingent on the injunction being granted.

[29] The test to be applied in determining whether the court should grant an interlocutory injunction is well known. It was re-stated in *RJR-MacDonald Inc. v. Canada (Attorney General),* [1994] 1 SCR 311, and asks three questions: (1) Is there a serious question to be tried? (2) Has the applicant demonstrated that it will suffer irreparable harm if the injunction is not granted? (3) Where does the balance of convenience lie as between the parties? These criteria are not to be treated as watertight categories, as each relates to the other, and strength on one criterion may compensate for weakness on another: *British Columbia (Attorney General) v. Wale* (1986), 9 BCLR (2d) 333 (CA), aff'd [1991] 1 SCR 62.

[30] Ultimately, the fundamental question is whether the granting of an interlocutory injunction is just and equitable in all the circumstances: *Edward Jones v. Voldeng*, 2012 BCCA 295 at para. 19, citing *Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd.,* 2007 BCCA 481.

The nature of the injunction

[31] The parties disagree about the nature of the relief being sought. 864 asserts that the nature of the injunction it seeks is prohibitory in nature, while Telus asserts that it is mandatory. A mandatory injunction is one that requires a defendant to act positively by taking specific action rather than refraining from taking action. In a contractual setting, an order that establishes a new right is considered mandatory and one that requires parties to act in accordance with the contract is considered prohibitory: *Setanta Sports NA Ltd. v. Score Television Network Ltd.*, 2009 CanLII 41213 (Ont SCJ) at para. 42; *Look Communications Inc. v. Bell Canada,* 2007 CanLII 30476 (Ont SCJ) at para. 12. Given the nature of a mandatory injunction, the onus resting on an applicant is higher.

[32] There is case law in other jurisdictions that requires the applicant seeking a mandatory injunction to establish a strong *prima facie* case at the first stage of the

analysis: see for example, *Teliphone Corp v. Comwave Wholesale Inc.*, 2015 ONSC 5142 at para. 19. However, the law in British Columbia requires the mandatory nature of the injunction to be taken into account at the balance of convenience stage: see *RCG Forex Service Corp. v. HSBC Bank Canada*, 2011 BCSC 315 at para. 10 and the cases cited therein.

[33] 864 submitted that the injunction sought is prohibitory because it seeks only to restrain Telus from disconnecting a contractual service. Telus submitted that the injunction is mandatory because it requires Telus to continue in a business relationship with 864 that it is entitled to, and has in fact, terminated.

[34] In contractual disputes where a party's right of termination is the central issue, courts have generally considered orders seeking to prevent that party from terminating a contract to be prohibitive: *Setanta Sports* at paras. 42-43.

[35] In *Look Communications*, a case relied on by 864, the plaintiff sought an interlocutory injunction to stop Bell from terminating telecommunications services it was providing under service agreements similar to those here. Look proposed to pay Bell the maximum amount of its monthly services as a term of the injunction. The underlying dispute between the parties concerned whether and how much Look was indebted to Bell for past services. When Bell issued a notice to disconnect Look's services for non-payment, Look disputed its right to do so. It relied on a provision in the service agreement that prohibited Bell from terminating service under certain conditions where there was a dispute about the basis for the proposed termination. In these circumstances, the court determined that the injunction was prohibitory only, reasoning as follows:

> [15] It is true that the effect of the order sought would be to require the parties to continue to do business with one another pending the outcome of the lawsuit, but they would do so on previously established terms. It is also important to keep in mind that Bell does not have an unlimited right to terminate service in the event of non-payment. As Article 22.2(d) makes clear, Bell may not terminate service for non-payment where there is a dispute and Bell does not have reasonable grounds for believing that the purpose of the dispute is to evade or delay payment. The injunction sought by Look requests the court to enforce that term of the parties' contract. Put

> another way, Look contends that disconnection by Bell would be a breach of contract in light of the strictures imposed by Article 22.2(d), and thus Look seeks an order prohibiting Bell from breaching that term of their contract.
>
> [16] In my view, the factual matrix of this case is such that the order sought by Look is not one that establishes a new right. Rather, the order sought requires Bell to comply with Article 22.2(d) and to perform its other obligations under the parties' other existing arrangements and contracts for the provision of telecommunications services, as Look pays Bell's monthly charges on a going-forward basis.

[36] In the context of the circumstances in *Look Communications*, the prohibitory nature of the injunction was clear: Bell did not have an unlimited right under the terms of the service agreement to terminate for non-payment given the dispute about that very issue, and Look was simply seeking to have the contract enforced pending determination of that issue. The context of this case is much less clear, as Telus has the right to terminate for non-payment that has not been remedied after due notice, and 864 has acknowledged that there has been non-payment for at least some of the amounts claimed by Telus. In this context, the injunction does not seek to have the contract enforced but rather seeks to prevent Telus from exercising an undisputed contractual right, thus giving 864 a new right. Put another way, in resisting the injunction, it is Telus that seeks to enforce the contract.

[37] Courts have considered orders that require a party to continue in a business relationship that, for its own business reasons, it does not want to continue, to be mandatory injunctions: see for example, *Western Paint & Wallcovering Co. Ltd. v. Benjamin Moore & Co. Limited*, 2009 MBQB 1 (a supplier terminating a retailer agreement); *RCG Forex Services Corp.* (a bank closing a customer's accounts). In *RCG Forex*, Verhoeven J. expressed the view (at para. 59) that courts should be very cautious about making such orders. In *Teliphone Corp v. Comwave* (at para. 16), the court held that an order requiring Comwave to continue to provide network services to the plaintiffs was mandatory in nature because it required Comwave to take positive steps.

[38] In this case, Telus has given notice to terminate and disconnect service, which was yet to come into effect at the time the injunction was sought. On this

basis, 864 submitted that the contract had not yet been terminated, and therefore an injunction would simply allow the contract to be enforced pending trial. In my view, this distinction is without substance in the context here. On June 16, 2016, Telus made the decision to terminate its business relationship with 864 after a long history of payment defaults, only some of which were disputed. The period of notice was regulated by the CRTC in order to provide an orderly process for termination of services. I do not consider these circumstances fundamentally different from those where a contract has already been terminated (such as in *Western Paint*). Whether or not the termination has been effected, an injunction would require Telus to continue to provide services that it has already chosen to discontinue due to 864's payment history.

[39] I fully appreciate that 864 has numerous claims against Telus, some of which challenge the validity of Telus' right to terminate the Service Agreements. However, this issue is not the central focus of the action, and as I explain below, there is little basis, on the pleadings and the evidence presented in this application, for challenging Telus' contractual right to terminate.

[40] Therefore, I do consider the nature of the order sought by 864 to be in the nature of a mandatory injunction, which I will take into account at the balance of convenience stage of the analysis.

1. Serious question to be tried

[41] As the court indicated in *RJR-MacDonald*, there are no specific requirements to meet this first branch of the test and the threshold is low. I am to make a preliminary assessment of the merits of the plaintiff's case, based on the pleadings and the evidence, and satisfy myself that it is neither frivolous nor vexatious. Subject to exceptions that do not apply here, I am not to get into a prolonged or detailed examination of the merits. Within these confines, I may draw appropriate inferences from the evidence: *Expert Travel Financial Security (E.T.F.S.) Inc. v. BMS Harris & Dixon Insurance Brokers Ltd.*, 2005 BCCA 5.

[42] Telus submitted that there is no serious question to be tried because 864 has not established any legal basis to challenge Telus' right to terminate the Service Agreements in accordance with their terms, and 864's claims for damages cannot be the basis for relief in the nature of rescission of the termination notice.

[43] 864 submitted that if one or more of its claims for breach of the Settlement Condition, negligent misrepresentation, breach of confidence, breach of duty of good faith and interference with economic relations is made out at trial, the disconnection notice will be set aside, and Telus may be found liable for damages.

[44] In its Notice of Civil Claim, 864 does not explicitly or directly challenge Telus' contractual rights of termination under the Service Agreements. Its discrete claim for breach of the Service Agreements "by wrongfully issuing the Disconnection Notice" claims only damages arising therefrom. However, the essence of the claim that the "Disconnection Notice and the Suspension Notice" are of no force is that 864's ability to meet its obligations under the Service Agreements was caused by the wrongful actions of Telus in relation to the loss of the Target acquisition. The legal basis for these wrongful actions includes a breach of a collateral contract (the Settlement Condition), breach of confidence, negligent misrepresentation, beach of the contractual duty of good faith, and interference with economic relations. There is nothing contained in this pleading that provides a clear legal basis to support anything other than damages as a remedy for these causes of action.

[45] Telus' notice of termination relied not only on the Settlement Agreement but also the Service Agreements. Therefore, whether or not the Settlement Agreement was conditional and was of no force and effect, Telus' rights under the Service Agreements remain.

[46] Under the Service Agreements, Telus provides tariffed (regulated) and forborne (unregulated) services to 864 and 864 pays fees of approximately $425,000 per month for both. The Service Agreements permit either party to terminate on 30 days' notice after December 31, 2015 (the expiration date). They also permit Telus to terminate both the tariffed and forborne services where there has been default in

paying past due accounts. Under s. 115.2 of the General Tariff, Terms of Service, Telus may suspend or terminate a customer's service if the customer "fails to pay a past due account … if it exceeds $50 or has been past due for more than two months." Under Schedule B of the Service Agreements, Telus may terminate the forborne services if the customer "is in material default of any provision of this Agreement" or "is in default of its payment obligations" and fails to remedy the default or make payment in full within 30 days after receiving written notice. The only exception is where there is a *bona fide* billing dispute; in that case Schedule B sets out a process for review.

[47] While Telus has the right under the Service Agreements to terminate for any reason, it purported to do so due to 864's default in its payment obligations and failure to remedy the default. Regardless of 864's claims against Telus, it has not disputed at least some of the indebtedness. This is evidenced at the very least by the consent judgment obtained on August 24, 2016, but there is evidence from which a clear inference can be drawn that a more substantial portion of Telus' claim for over $9 million is undisputed. For example, Mr. Laliberte's own evidence confirms a shortfall in payments between December 2012 and April 2015 in the amount of $3,415,496, net of a disputed amount of $827,959.

[48] There is also evidence that 864 acknowledged Telus' right to terminate. On June 14, 2016, two days before Telus issued the notice, Mr. Laliberte wrote in an email to Mr. Budd and another Telus representative:

> If you can no longer wait for me, I will understand, just let me know please. If you want to pull the plug on the network today, please let me know.

[49] Even as late as August 31, 2016, Mr. Laliberte was imploring Telus to give 864 "just a little more time" while also acknowledging that Telus had been "more than patient".

[50] There was considerable argument about the effect, if any, of the CRTC's decisions of September 22 and November 1, 2016. Telus submitted that it is not open for 864 to claim rescission of the termination notice because the CRTC, which has preferential jurisdiction over this issue, has already determined Telus'

entitlement to terminate the Service Agreements. 864 submitted that the CRTC made no such determination, as the only issue before it was the length of the notice Telus was required to give prior to disconnection.

[51] I agree with Telus that the CRTC has jurisdiction to deal with the validity of a notice of termination under a service agreement but I do not agree that the CRTC made a determination of Telus' right to terminate. This is because 864 did not take issue with its right to do so. In its August 31 application, 864 sought only an extension of the notice period prior to disconnection in order to allow it and its customers time to implement plans to switch to other carriers. Counsel for 864 submitted that under CRTC policy, it was not open to 864 to challenge Telus' right to terminate at an expedited hearing, and therefore nothing should be inferred from its failure to do so.

[52] I do not consider it necessary to address these arguments because such issues are not germane to the issues I must determine in this application. The fact that 864 chose not to at least reserve its right to challenge the validity of the termination notice before the very body with authority to directly address that issue bears only tangentially on my analysis under the first criterion. However, I consider the CRTC process and its decisions regarding notice to be pertinent to an assessment of the balance of convenience, and I will come back to this later in these reasons.

[53] There is one aspect of 864's claim that requires some comment in the context of a preliminary assessment. There is considerable dispute between the parties about the extent of the guarantee obligation of Teliphone under the AARGA as well as the amount secured by the debenture. 864 says that both the Legacy Obligation and payment for future charges were guaranteed by Teliphone and secured with the debenture. Telus says that only the Legacy Obligation was secured by the guarantee and debenture. 864's position is important to its claim that "all or most" of the amount owed under the Service Agreements was converted to equity in Teliphone under the terms of the debenture.

[54] 864's allegation that Telus elected to convert the Teliphone debenture to equity is supported in this application only by the evidence of Mr. Laliberte. He deposed that he met with Mr. Datoo on December 21, 2015 "to discuss the 864 Investment and the conversion of the Teliphone Debenture into equity in Teliphone which was requested by Mr. Datoo", sent an email the following day stating that they would "be initiating the conversion on the convertible debenture of Telus on Teliphone Corp before the expiration date", and issued a share certificate for 39,000,000 Teliphone shares to Telus on March 25, 2016 (two days before the conversion rights under the debenture expired).

[55] Mr. Datoo deposed that he had no recollection of receiving Mr. Laliberte's email about this and that he did not authorize the conversion of the debenture. He understood that Teliphone's shares were under a cease trade order and there was no commercial reason why Telus would convert the Legacy Obligation into shares of a valueless company. There is evidence that Teliphone is the subject of a cease trade order issued by the B.C. Securities Commission on October 25, 2013.

[56] Mr. Laliberte deposed in reply that the value of Teliphone is based on a $45,000,000 receivable note issued by Investel to Teliphone for the purchase of 864's shares, and therefore the value of Telus' shares amounts to 25% of that value. He characterized the Teliphone debenture as an investment by Telus, which Telus disputes, and asserted that the debenture offered Telus the opportunity to make a significant gain if Teliphone and 864 performed well.

[57] There is reason to question 864's assertion of value based on the Investel receivable note given the absence of evidence about the value of Investel as well as unexplained provisions in the recent MOU that allows Investel to cancel "inter-company or related party debt" in the amount of $45,000,000. There is reason to question 864's assertion about the value of the debenture given that it is expressly stated to be in the principal amount of $1,925,111, with a value that is to decrease with payment. There is also reason to question the evidence that Telus exercised its option to convert the debenture into equity. The debenture requires written notice in

a form attached to the document and there is no evidence that such a document exists, and given the October 25, 2013 cease trade order, any purported issuance of Teliphone shares to Telus after that date was prohibited.

[58] There was much more evidence and argument given on this issue, but it would be inappropriate for me to delve into it any further. A preliminary assessment of this indicates that 864's claim that its debt to Telus was eliminated or reduced by the conversion of the debenture is a weak one that takes little away from Telus' assertion of its right to terminate the Service Agreements for non-payment under their terms.

[59] The rest of 864's claims against Telus raise serious issues related to a claim for damages, which may result in a set-off of amounts owing under the Service Agreements, but it is questionable whether there is a basis to support a claim of wrongful termination justifying relief in the nature of rescission of Telus' contractual right under the Service Agreements. However, I accept the submission of counsel for 864 that Telus' contractual right to issue the notice to terminate and disconnect services is joined in the Notice of Civil Claim. While I have considerable doubts that there is a serious issue to be tried as it relates to the validity of the notice to terminate, given the low threshold described in *RJR-MacDonald*, I would not refuse the injunction sought on this basis alone. The weakness of this aspect of 864's claims can be addressed under the third part of the test, which addresses the balance of convenience.

2. Irreparable harm

[60] As outlined in *RJR-MacDonald* at 341, "irreparable" refers to the nature of harm suffered rather than its magnitude:

> It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other. Examples of the former include instances where one party will be put out of business by the court's decision . . . where one party will suffer permanent market loss or irrevocable damage to its business reputation . . .

[61] The evidence on this issue must be particular enough to demonstrate a real probability of irreparable harm and general assertions are insufficient: see *International Relief Fund for the Afflicted and Needy (Canada) v. Canadian Imperial Bank of Commerce*, 2013 ONSC 4612 at para. 37.

[62] 864 submitted that the evidence clearly demonstrates that insolvency is imminent if the injunction is not granted because disconnection of Telus' services will result in a loss of 42% of its Canadian revenues, without which the company cannot survive, and a receiver will likely be appointed as a result of Scotiabank's recent default notice and notice to enforce security.

[63] 864 says, however, that it has secured financing if the injunction is granted, which, as Mr. Laliberte deposed, is to be used "to pay out Scotiabank or another financing arrangements acceptable to Scotiabank" and to pre-pay Telus for services on a going forward basis.

[64] Telus accepts that insolvency may amount to irreparable harm, but submitted that the evidence in this case demonstrates that 864 is already insolvent and it has not satisfied its onus to show that this irreparable harm will be caused by the termination of the Service Agreements and not its own business conduct. Telus says that there is no need for an injunction to permit 864 to obtain communications services because such services are available from other providers and 864 has had ample time to make other arrangements. Telus also questions the appropriateness of 864 purporting to obtain financing that is conditional on an injunction being issued.

[65] I agree with Telus that if a party is insolvent due to its own conduct and is essentially the "author of its own misfortune", its insolvency will not constitute irreparable harm. This was the case in *B-Filer Inc. v. TD Canada Trust*, 2008 ABQB 749; *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation*, 2006 CanLII 26171 (Ont SCJ); and *Vertex Brands Inc. v. BRK Brands Inc.*, 2004 CarswellOnt 95 (SCJ). While these cases involved different circumstances, in each one the irreparable harm asserted by the plaintiff was considered to be self-inflicted such that it could not justify the granting of an injunction. *Vertex* involved the termination

of a distribution agreement for non-payment. The court had no doubt that irreparable harm would occur, but concluded the plaintiff "to be the author of its own misfortune by reason of its failure to keep its payments current" (at para. 17).

[66] 864's submissions on this issue focused on its imminent insolvency by being put out of business and by suffering a huge loss of customers. This is the kind of harm that can be irreparable where it cannot be quantified: see *RJR-MacDonald* at 341. However, there was no suggestion that in the circumstances here, 864 will not be able to quantify its losses, and it is clear that Telus will be able to pay damages if 864 is successful in its action.

[67] In any event, I agree with the submission of Telus that 864 has failed to establish that irreparable harm will be caused by the termination of the Service Agreements and disconnection and not just by its own business conduct.

[68] Even with Telus' services, 864 is insolvent. The company is not in a position to pay its past debt and monthly obligations to Telus because it is unable to meet its ongoing liabilities and has been in such circumstances for some time. This is evidenced by Telus' repeated, unsuccessful attempts since 2013 to have 864 cure its payment defaults. Although 864 did make substantial payments, it continued to be in a shortfall position, and there is no dispute about this in the evidence. This impecuniosity is not restricted to 864's relationship with Telus, as evidenced by various orders made against 864 in other actions. While some of these orders may have been subsequently paid (one under a consent order and another pursuant to garnishee proceedings), the Scotiabank notice demonstrates that 864 is unable to meet its operating expenses despite the services it has obtained from Telus. It also demonstrates the steps 864's creditors have had to take to obtain payment.

[69] 864 has had notice from Telus since June 16, 2016 of its intention to terminate the Service Agreements and there is no evidence as to what efforts, if any, 864 has made to secure services elsewhere. According to Telus, the tariffed services it provides could be obtained from other CLECs in western Canada, albeit for a higher price, and many of the forborne services could be obtained from CLECs

such as Bell, Rogers, Allstream or Axia. In response to this evidence, Mr. Laliberte deposed only that he "strongly disagreed" that such services are readily available.

[70] On the last day of the hearing, counsel for 864 sought to introduce a further affidavit purporting to provide evidence about what specific services are unavailable, but I considered the admission of such evidence at such a late date to be unfair, particularly in light of Telus' position that it disputed the accuracy of that evidence. This evidence ought to have been included in 864's application in the first place or at the very least in its responding materials prior to the hearing.

[71] In any event, technical information about what services may or may not be available is only part of the problem. In my view, it should have been a fairly straightforward matter for 864 to provide evidence about what efforts it made to obtain other services to accommodate its customers. This is especially important in light of the additional notice period granted by the CRTC.

[72] The state of the evidence here can be contrasted with that in *Look Communications*. There, uncontradicted evidence was adduced showing that the plaintiff was unable to secure replacement telecommunication services for a considerable time and at considerable expense, and expected to lose substantially all of its customers within one week. On this basis, the court found that by the time alternate services could be obtained, Look's entire customer base would be gone, its investment in building that customer base would be forfeited, and its goodwill and reputation would be irreparably damaged.

[73] In 864's submission, the fact that it has obtained the backing of a significant funder indicates that its insolvency is not inevitable if the injunction is granted, as presumably this funder would not be prepared to advance money to a company in that position. Further, 864 suggested that it does not need to rely solely on the new financing to pre-pay for Telus' services given that it does generate significant cash flow from the services it provides to its customers, as shown in its historical payment history.

[74] I do not accept this submission. 864 has provided no financial statements or other documentation that would permit the court to assess the company's ability to carry on, and its historical payment history indicates not only that it has been unable to meet its monthly obligations but also that its parent company or other entities have often made payments on its behalf. In addition, I have serious concerns about the nature, scope and sufficiency of the financing now being offered to 864.

[75] In a reply affidavit, Mr. Laliberte deposed that if the injunction is granted, a new lender will provide a line of credit in the amount of $2,500,000 USD to Investel "to provide working capital and for repayment of outstanding indebtedness", which will be used to pay the amounts due to Telus under the August 24, 2016 consent judgment and to pre-pay Telus for services on a going-forward basis. He also deposed that Investel has confirmed financing from another lender who will "pay out or provide the necessary assurances" to Scotiabank so that it will withdraw its default notice. The only documentation provided relates to the former financing, with a copy of the MOU and a comfort letter.

[76] The MOU is between the lender and Investel. It refers to 864 as TNW, its prior name. It provides that funding for a proposed business relationship with Investel will be undertaken in two stages: (a) a line of credit "to maintain TNW and move projects forward in the interim", and (b) "a larger funding" which consists of assistance with preparing and implementing a proposal to secure third party funding of up to $25 million USD. The lender has no obligation to make any further investment and does not guarantee that such funding will be successfully raised.

[77] The line of credit is to be provided in three draws and the specific use of these funds is not set out in the document, but is to be agreed upon by the parties in "Definitive Documentation", which is not attached. The document does state, however, that the line of credit is to be used for working capital purposes and only for payment of outstanding indebtedness that is agreed to in writing by the lender. The lender's obligation to fund each draw is subject to a number of conditions, including consent "if applicable" of the other lender (regarding the Scotiabank debt),

no material adverse change in the financial condition of "Investel Parties", use of proceeds to be consistent with a use approved by the lender in writing, satisfactory completion of due diligence, and execution of the Definitive Documentation.

[78] There is nothing from the lender itself that confirms that these conditions have been met, in particular, agreement as to the specific uses for the line of credit as it relates to 864. There is only Mr. Laliberte's assertion that the lender "has advised that they are satisfied with their due diligence performed under the MOU and closing documents are expected to be finalized this week, with closing no later than Monday, November 21, 2016". Interestingly, there is also nothing in the documentation that makes this financing conditional on the granting of an injunction.

[79] The comfort letter confirms interim funding of $2.5 million USD to Investel "to be used for the operation of its telecommunication assets" but does not assure continued funding beyond the initial line of credit:

> We will work with Investel to access additional capital to further the development of the TNW platform, and to facilitate the strategic growth and operational deployment of Investel's patent portfolio.

[80] This evidence does not provide an unconditional commitment to lend the funds to 864 to pay both the consent judgment and its monthly obligations to Telus, and even if it did, it provides only enough to keep 864 afloat for no more than six months. There is no commitment to continued funding beyond the initial line of credit other than a pledge to assist Investel with a proposal to secure financing from an unnamed third party. There is no evidence providing any details about the financing to be used to address the Scotiabank notice.

[81] The economic harm that 864 will now experience as a result of Telus' termination arises from decisions it has made about the conduct of business and its already established impecuniosity. The need to obtain additional financing to carry on business underscores the problem, and the financing presented is insufficient to ensure that 864 will be able to pre-pay for all Telus services until trial. Again, the circumstances here are considerably different from those in *Look Communications*,

where the plaintiff was in a more stable financial position, having been found to have "an underlying asset of significant value" (para. 36).

[82] In my view, granting the injunction will not save 864 from insolvency; it will simply postpone it. In such circumstances, I am not satisfied that 864 will suffer irreparable harm if the injunction is not granted.

3. Balance of convenience

[83] This part of the test has been described as "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits": per *Manitoba (Attorney General) v. Metropolitan Stores Ltd.*, [1987] 1 SCR 110, cited in *RJR-MacDonald* at 342.

[84] The factors to be considered, which will vary in each case, may include the ability of parties to pay damages, preservation of the *status quo*, the strength of each party's case, and harm to third parties: *RJR-MacDonald* at 342-343; *Crosshair Exploration & Mining Corp. v. Universal Uranium Ltd*., 2010 BCSC 334 at para. 47; *British Columbia Hydro and Power Authority v. Boon*, 2016 BCSC 355 at para. 69; *Edward Jones* at para. 46. The insolvency of a party that prevents it from giving a meaningful undertaking as to damages is also a factor to take into account in assessing the balance of convenience: see for example, *Re Canadian Petcetera Limited Partnership,* 2009 BCSC 520 at para. 26.

[85] There is no dispute that Telus is fully capable of paying any damages that may be awarded against it. Preservation of the *status quo* is not particularly helpful here, as what constitutes the *status quo* depends on one's view about the validity of Telus' right to terminate. In my view, the balance of convenience favours Telus for the following reasons:

a) the relative weakness of 864's case to support a remedy in the nature of rescission of the termination notice;

b) the amelioration of harm to third parties as a result of the CRTC's regulation of the notice period for that very purpose;

c) the insufficiency of the financing proposed to meet the proposed terms of an injunction;

d) the real risk that 864 will default in the terms of pre-payment, which will result in Telus again giving notice to terminate and having to provide services without any assurance of payment during the notice period;

e) the inability of 864 to provide a meaningful undertaking as to damages.

[86] Telus has good reason to doubt 864's assurances of payment given its history and the court should be careful not to make an order that would force it to continue in a business relationship that it wishes to end. The mandatory nature of the injunction is also a factor that favours Telus, but given all of the other factors at play here, I would come to the same conclusion even if the injunction is considered to be prohibitory.

[87] I have already discussed the basis for my assessment of the weakness of 864's claim for rescission.

[88] With respect to third parties, 864 stressed the serious impact disconnection will have on "nearly 30,000 working telephone numbers" belonging to its customers. This ignores the entire regulatory process before the CRTC and the provision of an extended notice period in order to ensure a smooth transition for 864's affected customers. In its September 22, 2016 decision, the CRTC ordered 864 to "notify, forthwith", all affected customers, and to provide confirmation of this and a list of all affected customers, in confidence, no later than September 30, 2016. Similar orders were made in the CRTC's November 1, 2016 decision.

[89] I appreciate that the pre-payment conditions proposed by 864 were intended to create a situation whereby Telus would not be prejudiced by an injunction but I am not satisfied that these conditions can be adequately met. I have addressed the

insufficiency of the financing proposed, which takes on particular importance in light of 864's history of non-payment or insufficient payment and the evidence of its insolvency notwithstanding Telus' continued provision of services. There is a real likelihood that 864 will be unable to meet the pre-payment terms of an injunction through to trial.

[90] In the event of a default of the pre-payment term by 864, Telus will again be in the position to issue notice of termination and required to satisfy the regulatory process in order to protect the interests of 864's affected customers. During the notice period, Telus will very likely be in the position of having to provide services to 864 while 864 is in default of paying for those services.

[91] While 864 indicated a willingness to provide an undertaking as to damages, it submitted that little, if any, damage would flow to Telus from an injunction. This submission assumed that 864 would continue to pre-pay Telus for all services provided until trial, something that the evidence does not establish as likely. Given 864's financial circumstances, there is no indication that it is able to provide a meaningful undertaking as to damages.

[92] Finally, it is important to recognize that an interlocutory injunction is an extraordinary equitable remedy. The fact that 864 has taken no steps to satisfy the August 24, 2016 consent judgment does not bode well for a party seeking this kind of equitable relief.

[93] For all of these reasons, I concluded that it would not be just or equitable to grant the interlocutory injunction sought by 864, and the application was dismissed.

[94] Telus is entitled to its costs.

"Fisher, J."

APPENDIX B

téliPhone
NAVIGATA WesTeL

April 1, 2013

Re: Important Change from Navigata to téliPhone Navigata-Westel

Dear Valued Customer,

We pleased to announce that on December 4th, 2012, TeliPhone Corp. acquired the Navigata network and re-launched the business as téliPhone Navigata-Westel. This new ownership and management has positioned the company to develop and deliver new services that will help businesses and communities across Canada; and carriers around the world, find better ways to communicate.

Our mission to provide you with quality products at a fair price with a high level of service and reliability remains uncompromised. We assure you that téliPhone Navigata-Westel will continue to provide your existing services without interruption; and you should expect to see new service offerings and expanded territorial opportunities from us in the near future.

You will notice changes on your invoice in the coming months, such as a new corporate logo and the payee name from Navigata to téliPhone-Navigata-Westel. The transition will not affect any existing services and will remain otherwise seemless.

As mandated by the BC Provincial Government, on April 1, 2013, the BC HST was replaced by the Goods and Services Tax (GST – 5%) and Provincial Sales Tax (PST – 7%). The invoices for BC will reflect this change as of April 1, 2013. If you have a PST exemption, please send a copy of your PST Exemption Certificate to your Account Manager, or contact our Customer Service Group via email at connections@bc.teliphone.ca or 1.877.477.5266. For your records, our PST number is PST-1014-5496.

Please note that our offices are now located in the Vancouver downtown area. Our new physical address is:
300 – 1550 Alberni St
Vancouver, BC V6G 1A5

Thank you for continuing to support téliPhone-Navigata-Westel as your data and telecommunications provider. Our sales and service teams will continue to dedicate themselves to meeting your communication needs in 2013 and beyond.

Sincerely,

Sandeep S. Panesar, B.Eng.
Chief Operating Officer

1304 - 330 Bay St., Toronto, Ontario, M5H 2S8

January 1, 2016

Attn.: Legal Notices, Legal Department

[redacted]

RE: Contract Assignment

Dear Customer,

Over the years our organization has completed a number of acquisitions, mergers and divestitures that have caused the company to operate under multiple legal entities and brands since 1957. Some of the operating brands with which you may be familiar have included BC Rail, Westel, RSLCom, Navigata, Next, Teliphone Navigata Westel, Next Layer, Teliphone Data Centers, Teliphone, Titan Communications, Cloudphone, Choicetel Networks and Rocket Networks.

After much consideration and for ease of communication and transaction with our customers and suppliers we have consolidated all operations and services under TNW to unify the brand and our organization across the country. As such TNW will be responsible for the performance of all obligations of the terms of the Agreement(s) you have with us, including any and all future payments due in accordance with your Agreement(s).

Effective January 1, 2016 and pursuant to the appropriate assignment clauses in all Agreement(s) you have entered into with, or that were previously assigned to any of the following entities: BC Rail Telecommunications Inc., RSL Communications Inc., Westel Communications Inc. Navigata Communications 2009 Inc., Teliphone Corp., Teliphone Navigata Westel Communication Inc., Next Layer Inc., Teliphone Data Centers Inc., Titan Communications Inc., Cloudphone Inc., ChoiceTel Networks Inc., and Rocket Networks Inc., these Agreement(s) are assigned to TNW Networks Corp. operating under the TNW brand.

All future notices under the Agreement(s) should be forwarded to:

TNW Networks Corp.
1304 - 330 Bay Street
Toronto, Ontario
M5H 2S8

Attention: Contracts Administrator

Your service and services shall remain unaffected and will continue uninterrupted.

Yours sincerely,

Sandeep S. Panesar, B.Eng.
Chief Executive Officer

tnw
1304 - 330 Bay St., Toronto, Ontario, M5H 2S8

1er Janvier, 2016

Att.: Département Légal, Informations Légales

[redacted]

RÉ : Attribution de Contrat

Cher Client,

Au cours des années, notre organisation a complété un nombre d'acquisitions, fusions et désinvestissements qui ont fait en sorte d'opérer sous plusieurs entités juridiques et marques depuis 1957. Quelques-uns de ces marques d'exploitation avec lesquels vous êtes familiers inclus BC Rail, Westel, RSLCom, Navigata, Next, Teliphone Navigata Westel, Next Layer, Teliphone Data Centers, Teliphone, Titan Communications, Cloudphone, Choicetel Networks et Rocket Networks.

Après beaucoup de considération et pour faciliter la communication et transactions avec nos clients et fournisseurs, nous avons consolidé tous nos opérations et services sous TNW pour unifier la marque et notre organisation à travers le pays. Par conséquent, TNW sera responsable de l'exécution des obligations sous les conditions de vos contrat(s) avec nous, incluant tous les futurs paiements dû conformément à vos contrat(s).

À compter du 1er Janvier, 2016 et conformément aux clauses appropriées dans tous les contrat(s) que vous avez avec nous, ou qui ont été précédemment assignés aux entités suivantes : BC Rail Telecommunications Inc., RSL Communications Inc., Westel Communications Inc. Navigata Communications 2009 Inc., Teliphone Corp., Teliphone Navigata Westel Communication Inc., Next Layer Inc., Teliphone Data Centers Inc., Titan Communications Inc., Cloudphone Inc., ChoiceTel Networks Inc., et Rocket Networks Inc., ces contrat(s) sont assignés à TNW Networks Corp., opérant sous la marque TNW.

Tous les futurs avis en vertu de ces Contrat(s) doivent être envoyés à :

TNW Networks Corp.
1304 - 330 Bay Street
Toronto, Ontario
M5H 2S8

Attention: Administrateur des Contrats

Vos services resteront inaffectés et continueront sans interruption.

Sincèrement Vôtre,

Sandeep S. Panesar, B.Eng.
Président Directeur Général

All under a new simple company

tnw

APPENDIX C

NO. S1610905
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025 CANADA INC. AND TELIPHONE DATA CENTRES INC.

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE MR JUSTICE BOWDEN	))	THURSDAY, THE 6TH DAY OF APRIL, 2017

ON THE APPLICATION of The Bank of Nova Scotia, Bell Canada, Northwestel Inc., Bell Mobility Inc., Bell Aliant Regional Communications Inc., Cascade Divide Enterprises, Inc. and Bond Mezzanine Fund III Limited Partnership (collectively, the "**Applicants**") coming on for hearing March 13, 2017, March 17, 2017, March 23, 2017, April 4, 2017, April 5, 2017 and April 6, 2017 at the Courthouse, 800 Smithe Street, Vancouver, British Columbia.

AND ON READING the material filed; AND ON HEARING H. Lance Williams and Matthew Nied, counsel for The Bank of Nova Scotia and other counsel as listed on **Schedule "A"** hereto, ~~and by consent~~;

THIS COURT ORDERS AND DECLARES THAT:

AMENDED ORDER

1. This Order amends the Amended and Restated Initial Order pronounced herein on November 30, 2016 (as further amended). To the extent that the provisions of this Order conflict with any other Order granted in these proceedings, the provisions of this order shall govern.

JURISDICTION AND CONVERSION OF PROCEEDINGS

2. Teliphone Canada Corp. is added as a petitioner herein (collectively with 8640025 Canada Inc. ("**864**") and Teliphone Data Centres Inc. ("**TDC**"), the "**Petitioners**").

3. The Petitioners are companies to which the *Companies' Creditors Arrangement Act* (the "**CCAA**") applies.

4. All provisions of this Order which apply to the Petitioners shall apply with equal force and effect to TNW Networks Corp. ("**Networks**", and collectively with the Petitioners, the "**Companies**"), except as specifically provided herein.

PLAN OF ARRANGEMENT AND ASSET DETERMINATION

5. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**"). Notwithstanding the foregoing, the filing of a Plan by the Petitioners or any matters ancillary thereto, shall not delay or otherwise amend the solicitation process commenced by the Monitor in these proceedings (the "**Solicitation Process**").

POSSESSION OF PROPERTY AND OPERATIONS

6. Forthwith, the Monitor shall review, inventory and otherwise investigate the affairs and assets of Networks, and shall determine what Property (as defined below) of Networks was not derived directly or indirectly from the Property of the Petitioners, their subsidiaries, or any other entities subject to the Applicants' security (the "**Networks Property**"), and report the same to the Court. Any Property of Networks which the Monitor is unable to determine the origin of shall not be Networks Property, and for greater certainty, until determined as set out herein, none of the Property shall be Networks Property. Any party may challenge the determination of what constitutes Networks Property by application to this Court within 10 business days following the Monitor's report on the same and which matter shall be determined in this proceeding on a summary basis.

7. The Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of all of the assets and undertakings of the Companies (the "**Property**") and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor considers it necessary or desirable:

   (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate and carry on the business of the Companies, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the other business, or cease to perform any contracts of the Companies;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including, without limitation, those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Companies or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Companies and to exercise all remedies of the Companies in collecting such monies, including, without limitation, to enforce any security held by the Companies;

(g) to settle, extend or compromise any indebtedness owing to the Companies;

(h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Monitor's name or in the name and on behalf of the Companies, for any purpose pursuant to this Order;

(i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Companies;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Companies, the Property or the Monitor, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property (other than the Networks Property), including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Monitor in its discretion may deem appropriate, including, without limiting the foregoing, continuing the sales and investment Solicitation Process;

(l) to sell, convey, transfer, lease or assign the Property (other than the Networks Property) or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding $50,000, provided that the aggregate consideration for all such transactions does not exceed $200,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under Section 59(10) of the *Personal Property Security Act*, R.S.B.C. 1996, c. 359, or similar requirements under any other personal property security legislation to the extent the same may be waived by the court, shall not be required;

(m) to apply for any vesting order or other orders necessary to convey the Property (other than the Networks Property) or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property and these proceedings, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if considered necessary or appropriate by the Monitor, in the name of the Companies;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Companies, including, without limitation, the ability to enter into occupation agreements for any property owned or leased by the Companies;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Companies may have;

(s) to review the obligations of Networks to its suppliers incurred prior to the date of this Order, and if deemed advisable in the Monitor's sole discretion, to pay such obligations; and

(t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Companies, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

8. Each of (i) the Companies, (ii) all of the Companies' current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Monitor upon the Monitor's request.

9. All Persons shall forthwith advise the Monitor of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Companies, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or in paragraph 10 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

10. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by an independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the

Monitor may in its discretion require including, without limitation, providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE MONITOR

11. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Monitor except with the written consent of the Monitor or with leave of this Court.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

12. Until and including June 30, 2017, or such later date as this Court may order (the "**Stay Period**"), no Proceeding against or in respect of the Companies or the Property shall be commenced or continued except with the written consent of the Monitor or with leave of this Court and any and all Proceedings currently under way against or in respect of the Companies or the Property are hereby stayed and suspended pending further Order of this Court; provided, however, that nothing in this Order shall prevent any Person from commencing a Proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such Proceeding is not commenced before the expiration of the stay provided by this paragraph and provided that no further step shall be taken in respect of Proceeding except for service of the initiating documentation on the Companies and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

13. During the Stay Period, all rights and remedies (including, without limitation, set-off rights) against the Companies, the Monitor, or affecting the Property, are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that nothing in this Order shall (i) empower the Monitor or the Companies to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) affect the rights of any regulatory body as set forth in section 69.6(2) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. The stay and suspension shall not apply in respect of any "eligible financial contract" as defined in the BIA.

NO INTERFERENCE WITH THE MONITOR

14. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Companies, without written consent of the Monitor or leave of this Court.

CONTINUATION OF SERVICES

15. During the Stay Period, all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services of any kind to the Companies are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Monitor, and that the Monitor shall be entitled to the continued use of the Companies' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Monitor in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and the Monitor, or as may be ordered by this Court. Notwithstanding the foregoing, nothing herein shall require counsel for 864 and TDC ("**Petitioners' Counsel**") to continue to provide legal services to the Petitioners.

16. The Monitor shall continue to make payments to the Network Providers as provided for in paragraphs 14 – 16 of the Order pronounced herein on December 21, 2016, unless otherwise agreed to by the respective Network Provider and the Monitor. The Network Providers shall have all remedies pursuant to those paragraphs in the event of non-payment.

MONITOR TO HOLD FUNDS

17. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Monitor from and after the making of this Order from any source whatsoever including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Monitor (the "**Post-Order Accounts**") and the monies standing to the credit of such Post-Order Accounts from time to time, net of any disbursements provided for herein, shall be held by the Monitor to be paid in accordance with the terms of this Order or any further order of this Court.

EMPLOYEES

18. Subject to the right of employees to terminate their employment notwithstanding paragraph 15, all employees of the Companies shall remain the employees of the Companies until such time as the Monitor, on the Companies' behalf, may terminate the employment of such employees. The Monitor shall not be liable for any employee-related liabilities of the Companies, including any successor employer liabilities as provided for in Section 14.06(1.2) of the BIA, other than amounts the Monitor may specifically agree in writing to pay and amounts in respect of obligations imposed specifically on receivers by applicable legislation. The Monitor shall be liable for any employee-related liabilities, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts relating to any employees that the Monitor may hire in accordance with the terms and conditions of such employment by the Monitor.

19. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 or Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, the Monitor may disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Companies, and shall return all other personal information to the Monitor, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

20. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial or other law relating to the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Management Act*, R.S.B.C. 1996, c. 118 and

the *Fish Protection Act*, S.B.C. 1997, c. 21 and regulations thereunder (collectively "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless the Monitor is actually in possession.

LIMITATION ON THE MONITOR'S LIABILITY

21. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

NON-DEROGATION OF RIGHTS

22. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after November 18, 2016 (the "**NOI Date**"), nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Companies on or after the NOI Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

ADMINISTRATION CHARGE

23. The reasonable fees and disbursements of the Monitor and its legal counsel, in each case at their standard rates and charges, shall be entitled to and are hereby granted a charge (the "**New Monitor's Charge**") on the Property, which charge shall not exceed in an aggregate amount of $250,000, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the New Monitor's Charge shall have the priorities set out in paragraphs 32 and 34.

24. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Supreme Court of British Columbia and may be heard on a summary basis.

25. Prior to the passing of its accounts, the Monitor shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and

charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

26. The reasonable fees and disbursements of Petitioners' Counsel properly incurred to the date of this Order shall be reviewed by the Monitor, and either paid, settled by agreement between the Monitor and Petitioners' Counsel or reviewed pursuant to the provisions of the *Legal Professions Act*, SBC 1998, c. 9 (the "**LPA**"). Once paid as set out herein, Petitioners' Counsel shall no longer be entitled to security pursuant to the CCAA Charges (as defined below). For greater certainty no fees and disbursements incurred by Petitioners' Counsel (other than in relation to a review pursuant to the LPA) after the date of this Order shall be secured by the CCAA Charges (as defined below).

FUNDING

27. The Monitor be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $1,500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as the Monitor deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Monitor by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Monitor's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, having the priority set out in paragraphs 32 and 34.

28. Neither the Monitor's Borrowings Charge nor any other security granted by the Monitor in connection with its borrowings under this Order shall be enforced without leave of this Court.

29. The Monitor is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Monitor's Certificates**") for any amount borrowed by it pursuant to this Order.

30. The monies from time to time borrowed by the Monitor pursuant to this Order or any further order of this Court and any and all Monitor's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Monitor's Certificates.

ALLOCATION

31. That any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the New Monitor's Charge and Monitor's Borrowings Charge amongst the various assets comprising the Property.

PRIORITY OF CHARGES

32. The priority of the charges previously granted by this Honourable Court in this proceeding, namely the Administration Charge and the DIP Lender's Charge (together, the "**CCAA Charges**") shall continue to charge the Property and the priority of the CCAA Charges, in relation to the New Monitor's Charge and the Monitor's Borrowings Charge granted in this Order, shall be as follows:

    (a) First – Administration Charge (to the maximum amount of $200,000) on a *pari passu* basis with the New Monitor's Charge (to the maximum amount of $250,000);

    (b) Second – DIP Lender's Charge; and

    (c) Third – Monitor's Borrowings Charge.

33. Any security documentation evidencing, or the filing, registration or perfection of, the CCAA Charges, the New Monitor's Charge and the Monitor's Borrowings Charge (collectively the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

34. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

35. Except as otherwise expressly provided herein, or as may be approved by this Court, the Companies shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Companies obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge.

36. Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Companies; and notwithstanding any provision to the contrary in any Agreement:

    (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance shall create or be deemed to constitute a breach by the Companies of any Agreement to which it is a party;

    (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by the creation of the Charges; and

    (c) the payments made by the Companies or the Monitor pursuant to this Order, the, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

37. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Companies' interest in such real property leases.

GENERAL

38. The Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

39. Nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Petitioners.

40. The Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal or regulatory or administrative body, wherever located, for recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

41. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) clear business days' notice to the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

THIS COURT REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction, wherever located, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All such courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Lawyers for The Bank of Nova Scotia
Cassels Brock & Blackwell LLP
(H. Lance Williams / Mary I.A. Buttery)

Lawyers for Bell Canada, Northwestel Inc., Bell Mobility Inc. and Bell Aliant Regional Communications Inc.
Borden Ladner Gervais LLP
(Magnus C. Verbrugge / Lisa Hiebert)

Lawyers for Cascade Divide Enterprises, Inc.
Kornfeld LLP (Daniel Hepburn)

BY THE COURT

REGISTRAR

ENDORSEMENTS ATTACHED

Lawyers for Bond Mezzanine Fund III Limited Partnership

Munro & Crawford
(Ronald J. Argue)

Lawyers for TELUS Communications Company

Dentons Canada LLP
(John R. Sandrelli / Jordan Schultz)

Lawyers for SBA Canada ULC

McMillan LLP
(Peter J. Reardon)

Lawyers for Her Majesty the Queen in Right of Canada

Department of Justice - Canada
(Jason W. Levine)

Lawyers for 8640025 Canada Inc. and Teliphone Data Center Inc.

Lunny Atmore LLP
(Ritchie Clark, Q.C. / Julien A. Dawson)

Lawyers for Bond Mezzanine Fund III Limited Partnership

Munro & Crawford
(Ronald J. Argue)

ENDORSEMENTS ATTACHED

S1610905

Teliphone Canada Corp.
(Sandeep Panesar, Authorized Signatory)

TNW Networks Corp.
(Sandeep Panesar, Chief Executive Officer)

Lawyer for the Monitor
Warren Milman
McCarthy Tetrault

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

NAME	PARTY REPRESENTED
L. Hiebert (March 13, 17 and 23, April 4) M. Verbrugge (April 5 and 6)	Bell Canada, Northwestel Inc., Bell Mobility Inc., Bell Aliant Regional Communications Inc.
R. Argue	Bond Mezzanine Fund III Limited Partnership
D. Hepburn	Cascade Divide Enterprises, Inc.
W. Milman	Ernst & Young Inc., the court-appointed Monitor.
J. Sandrelli and J. Schultz	Telus Communications Company
P. Reardon	SBA Canada ULC
R. Clark, Q.C. (March 13, 17 and 23) and J. Dawson (April 4 - 6) P. Krawus (April 4 - 6)	8640025 Canada Inc. and Teliphone Data Center Inc.
C. Veinotte (March 13 only)	TNW Networks Corp. and Teliphone Canada Corp.
J. Levine (March 13, 23, April 4 - 6) C. Matthews (March 17)	Her Majesty the Queen in Right of Canada

SCHEDULE "B"
MONITOR'S CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $ _____

1. THIS IS TO CERTIFY that Ernst & Young Inc., the court-appointed (the "**Monitor**") of all of the assets, undertakings and properties of the Companies, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Supreme Court of British Columbia (the "**Court**") dated the 6th day of April, 2017 (the "**Order**") made in SCBC Action No. S1610905 has received as Monitor from the holder of this certificate (the "**Lender**") the principal sum of $●, being part of the total principal sum of $1,500,000 which the Monitor is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly] not in advance on the ● day of each month after the date hereof at a notional rate per annum equal to the rate of ● per cent above the prime commercial lending rate of Bank ● from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Monitor pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at ●, British Columbia.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Monitor to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate to permit the Monitor to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Monitor does not undertake, and it is not under any personal liability, to pay any sum under this Certificate in respect of which it may issue certificates under the terms of the Order.

DATED the ___ day of _____ , 201_.

Ernst & Young Inc., solely in its capacity as Monitor, and not in its personal capacity

Per: _____
Name:
Title:

APPENDIX D

No. S-1610905
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025 CANADA INC. AND TELIPHONE DATA CENTRES INC.

PETITIONERS

ORDER MADE AFTER APPLICATION
(VESTING ORDER)

BEFORE	THE HONOURABLE JUSTICE AFFLECK	15/Sep/2017

THE APPLICATION of Ernst & Young Inc., as court-appointed monitor (the "**Monitor**") of the Petitioners (including Teliphone Canada Corp., and collectively with the Petitioners and TNW Networks Corp., the "**Companies**"), coming on for hearing at Vancouver, British Columbia, on September 12, 13 ~~and 14~~ 14 and 15, 2017; AND ON HEARING Gordon G. Plottel, counsel for the Monitor, and those other counsel listed in Schedule "**A**" hereto; AND UPON READING the materials filed including the Twelfth Report of the Monitor, dated August 27, 2017 (the "**Twelfth Monitor's Report**"), and the Supplement to the Twelfth Report dated September 7, 2017 (the **"Supplement Report"**); AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C- 36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS, DIRECTS AND DECLARES THAT:

1. The sale transaction (the "**Transaction**") substantially in the form of the Asset Purchase Agreement (the "**Sale Agreement**") between the Monitor for and on behalf of the Companies and 10276375 Canada Inc. (the "**Purchaser**"), a copy of

which is attached as Appendix "Q" to the Twelfth Report, as revised as noted in the Supplement Report, is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Monitor is hereby authorized and approved, with such minor amendments as the Purchaser and the Monitor may deem necessary, and the Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance to the Required Purchased Assets (as defined in the Sale Agreement) to the Purchaser.

2. This Court orders and declares that the Required Purchased Assets (as defined in the Sale Agreement and pursuant to the revised Schedule M to the Sale Agreement) are rightfully owned by the Companies and capable of being sold to the Purchaser by the Monitor pursuant to the terms and conditions of the Sale Agreement.

3. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule "**B**" hereto (the "**Monitor's Certificate**"), all of the Companies' respective right, title and interest in and to the Required Purchased Assets as defined in the Sale Agreement shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, claims, trusts or deemed trusts (whether contractual, statutory, or otherwise), assignments, actions, levies, taxes, writes, options, agreements, disputes, debts, liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise or other rights, limitations or restrictions of any nature whatsoever (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

   (a) any encumbrances or charges created by Orders of this Court made in these proceedings;

   (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and

   (c) all of the encumbrances listed in Schedule "**C**" hereto (all of which are collectively referred to as the "**Encumbrances**"), which term shall not include the permitted encumbrances, easements and restrictive covenants);

and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Required Purchased Assets are hereby expunged and discharged as against the Required Purchased Assets.

4. The Monitor is to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

5. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Required Purchased Assets, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Required Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Required Purchased Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

6. Pursuant to Section 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, Section 18(10)(o) of the *Personal Information Protection Act* of British Columbia and any other analogous legislation in force in any Province within the Dominion of Canada , the Monitor is hereby authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the company's records pertaining to the Companies' past and current employees, including personal information of those employees listed in Schedule "P" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Companies.

7. Subject to the terms of the Sale Agreement, vacant possession of the Required Purchased Assets, including any real property, shall be delivered by the Monitor or any other person in possession of same to the Purchaser at 12:00 noon on the Closing Date (as defined in the Sale Agreement), subject to the permitted encumbrances as set out in the Sale Agreement.

8. The Monitor, with the consent of the Purchaser, shall be at liberty to extend the Closing Date to such later date as those parties may agree without the necessity of a further Order of this Court.

9. Notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order in respect of the Companies now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Companies;

the vesting of the Required Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

10. The activities and conduct of the Monitor in the within proceedings as described in the Twelfth Report, and the Supplement Report, and the Twelfth Report and the Supplement Report themselves, be and are hereby approved and ratified in all respects.

11. The Monitor or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

12. In respect of any Purchased Asset that is not a Required Purchased Asset (collectively, the "**Disputed Assets**"), the Monitor is authorized and empowered to:

(a) return some or all of the Disputed Assets to the person or persons, other than the Petitioners, who claim ownership of such Disputed Assets (the "**Claiming Person**"), on terms that are agreed to by the Monitor, the Claiming Person, and the Purchaser; or

(b) consult, in its discretion, with Glen Gregory and Sandeep Panesar, who would be afforded reasonable supervised access to the Petitioners' books, records, executive management personnel and premises, to seek a consensus on whether a Disputed Asset may be determined to be:

i) beneficially owned by a Petitioners or otherwise able to be sold by the

Monitor pursuant to the Sale Agreement (collectively or individually, a "**Saleable Asset**"), in which case the Purchaser shall have the right to immediately exercise the Option (as defined in the Sale Agreement) with respect to such Saleable Asset without further order of this court: or

ii) beneficially owned by a Claiming Person and not a Saleable Asset, in which case the Monitor shall release such asset as soon as practicable to such Claiming Person;

(c) failing an agreement referred to in subparagraph (a), or a determination of a Saleable Asset pursuant to subparagraph (b) (i) on or before October 2, 2017, the Claiming Person shall deliver to the Monitor no later than October 13, 2017, a proof of claim, verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the Disputed Asset to be identified. For clarity, such proof of claim may include more than one Disputed Asset. The Monitor shall then, within 15 days of receipt of such proof of claim, on notice to the Claiming Person, either admit the claim or advise that the claim is not admitted. Unless an application is brought in this proceeding to appeal the Monitor's determination within 15 days of notice of the Monitor's determination, the Monitor shall either:

1) release the Disputed Asset, if the claim is admitted; or
2) be entitled to classify such asset as a Saleable Asset, if the claim is not admitted.

(the "**Disputed Claims Process**").

13. Upon the conclusion of the Disputed Claims Process, the Monitor shall file a Report to report on, among other things, the result of the Disputed Claims Process and seek any consequential further orders.

14. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

15. Endorsement of this Order by counsel, other than counsel for the Monitor, appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Gordon G. Plottel
Counsel for Ernst & Young Inc. in its capacity as
Court-appointed Monitor

BY THE COURT

REGISTRAR

SCHEDULE A

Counsel Name	Party Represented
Gordon G. Plottel	Ernst & Young Inc., as court-appointed Monitor
John Sandrelli and Jordan Schultz	TELUS Communications Company
H.C. Ritchie Clark, Q.C.	Teliphone Corp.
Daniel Hepburn	Cascade Divide Enterprises
Lisa Hiebert	Bell Canada, Northwestel Inc., Bell Mobility Inc., Bell Aliant Regional Communications Inc.
Ronald J. Argue	Bond Capital Fund V Limited Partnership
George Gregory	TNW Networks Corp.
William Roberts	10276375 Canada Inc.
Sandeep Panesar	Self-represented party
Linda G. Yang	SBA Canada ULC

SCHEDULE B – MONITOR'S CERTIFICATE

No. S-1610905
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025 CANADA INC. AND TELIPHONE DATA CENTRES INC.

PETITIONERS

MONITOR'S CERTIFICATE

1. Pursuant to an Order of the Court dated September 13, 2017 (the "**Approval and Vesting Order**"), the Court approved the Asset Purchase Agreement dated June 30, 2017 (the "**Sale Agreement**") between ERNST & YOUNG INC., solely in its capacity as Court- Appointed Monitor (the "**Monitor**") of the 86400125 Canada Inc., Teliphone Data Centres Inc., Teliphone Canada Corp. and TNW Networks Corp. (collectively, the "**Companies**"), as vendor, and 10276375 Canada Inc., as purchaser (the "**Purchaser**", and, collectively with the Seller, the "**Parties**"), and ordered that all of the Companies' right, title and interest in and to the Required Purchased Assets (as defined in the Sale Agreement), vest in the Purchaser effective upon the delivery by the Monitor of this certificate to the Purchaser confirming: (i) the satisfaction by the Purchaser of the Purchase Price in relation to the purchase by the Purchaser of the Required Purchased Assets; (ii) that the conditions to be complied with at or prior to the Closing as set out in Section 6 of the Sale Agreement have been satisfied or waived by the Monitor or the

Purchaser, as applicable; and (iii) the purchase and sale of the Required Purchased Assets has been completed pursuant to terms and conditions of the Sale Agreement.

2. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Sale Agreement.

THE MONITOR HEREBY CERTIFIES as follows:

(a) The Monitor confirms that the Purchaser has satisfied the Purchase Price for the Required Purchased Assets due on the Closing Date pursuant to the Sale Agreement;

(b) The conditions to Closing as set out in Section 6 of the Sale Agreement have been satisfied or waived by the Monitor or the Purchaser, as applicable; and

(c) The Transaction has been completed pursuant to the Sale Agreement.

DATED at the City of Vancouver, in the Province of British Columbia, this_____day of _____, 2017.

ERNST & YOUNG INC., solely in its capacity as the Court-appointed Monitor of Teliphone Data Centres Inc. *et al.* and not in its personal or corporate capacity

By: _____

Name:

Title:

SCHEDULE C– ENCUMBRANCES

All Encumbrances other than the Permitted Encumbrances (as Defined in the Sale Agreement) and including the following Financing Statements registered in the Alberta Personal Property Registry:

1. Registration Number 14073035689
2. Registration Number 15012231289
3. Registration Number 15060836877
4. Registration Number 13050314442
5. Registration Number 14073035826
6. Registration Number 12113006953
7. Registration Number 14042812481
8. Registration Number 14042812547
9. Registration Number 14073035689
10. Registration Number 15041329919

All Encumbrances other than the Permitted Encumbrances (as Defined in the Sale Agreement) and including the following Financing Statements registered in the British Columbia Personal Property Registry:

1. Base Registration # 079999H
2. Base Registration # 920830H
3. Base Registration # 920825H
4. Base Registration # 082268I
5. Base Registration # 540353I
6. Base Registration # 410043I
7. Base Registration # 649286I
8. Base Registration # 082269I
9. Base Registration # 540387I
10. Base Registration # 540406I

11. Base Registration # 668283J
12. Base Registration # 82267I
13. Base Registration # 328941H
14. Base Registration # 410043I
15. Base Registration # 649282I
16. Base Registration # 125487I
17. Base Registration # 261613I
18. Base Registration # 275531I
19. Base Registration # 287871I
20. Base Registration # 288044I
21. Base Registration # 313556I
22. Base Registration # 325282I
23. Base Registration # 325323I
24. Base Registration # 345323I
25. Base Registration # 345326I
26. Base Registration # 377947I
27. Base Registration # 403199I
28. Base Registration # 407423I
29. Base Registration # 410043I
30. Base Registration # 551816I
31. Base Registration # 2264191J
32. Base Registration # 414253J
33. Base Registration # 523017J
34. Base Registration #634652J
35. Base Registration # 662831J
36. Base Registration # 079988H

37. Base Registration # 079990H

38. Base Registration # 968970J

All Encumbrances other than the Permitted Encumbrances (as Defined in the Sale Agreement) and including the following Financing Statements registered in the Ontario Personal Property Registry:

1. File Number # 708515883

2. File Number # 706887162

3. File Number # 705231513

4. File Number # 705059046

5. File Number # 698476995

6. File Number # 695569995

7. File Number # 695570004

8. File Number # 683235198

9. File Number # 698479902

10. File Number # 686611962

All Encumbrances other than the Permitted Encumbrances (as Defined in the Sale Agreement) and including the following Financing Statements registered in the Saskatchewan Personal Property Registry:

1. Registration # 301509792

2. Registration # 301019978

3. Registration # 300959089

4. Registration # 301178064

5. Registration # 301178068

6. Registration # 301323021

All Encumbrances other than the Permitted Encumbrances (as Defined in the Sale Agreement) and including the following Financing Statements registered in the Quebec Register of Personal and Movable Real Rights:

1. Registration # 15-0515736-0001

2. Registration # 14-0349727-0002

3. Registration # 17-0214746-0003
4. Registration # 17-0349727-0001
5. Registration # 17-0214746-0002
6. Registration # 15-0296484-0004
7. Registration # 17-0214746-0001
8. Registration # 14-0755907-0002
9. Registration # 16-0491954-0009
10. Registration # 14-0755930-0001
11. Registration #13-0476361-0001
12. Registration # 12-0995708-0004

APPENDIX E

No. S-1610905
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025 CANADA INC. AND TELIPHONE DATA CENTRES INC.

PETITIONERS

ORDER MADE AFTER APPLICATION
(SECOND VESTING ORDER)

BEFORE	THE HONOURABLE JUSTICE AFFLECK	14 Dec 2017

THE APPLICATION of Ernst & Young Inc., as court-appointed monitor (the "**Monitor**") of the Petitioners (including Teliphone Canada Corp., and collectively with the Petitioners and TNW Networks Corp., the "**Companies**"), coming on for hearing at Vancouver, British Columbia, on December14, 2017; AND ON HEARING Gordon G. Plottel, counsel for the Monitor, and those other counsel listed in Schedule "**A**" hereto; AND UPON READING the materials filed including the Fifteenth Report of the Monitor, dated November 27, 2017 (the "**Fifteenth Monitor's Report**"), AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C- 36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS, DIRECTS AND DECLARES THAT:

1. The sale, assignment, transfer, and conveyance of all of the customer accounts held by, or in the name of, ChoiceTel Networks Ltd. and Titan Communications Inc., and the

Optional Purchased Assets listed on Schedule A (collectively, the "**Schedule "A" Assets**") to the Option Notice dated November 27, 2017, (the "**Option Notice**") delivered pursuant to the Amended and Restated Asset Purchase Agreement dated September 20, 2017, (the "**APA**") by Navigata Communications Limited (formerly 1027637 Canada Inc.) (the "**Purchaser**") to the Monitor, a copy of which is attached as Appendix "A" to the Fifteenth Monitor's Report is hereby approved.

2. The execution of the Option Notice by the Monitor is hereby authorized and approved, with such minor amendments as the Purchaser and the Monitor may deem necessary, and the Monitor is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the sale, assignment, transfer, and conveyance all of the Schedule "A" Assets to the Purchaser.

3. This Court orders and declares that all of the Schedule "A" Assets are rightfully owned by the Companies and capable of being sold to the Purchaser by the Monitor pursuant to the terms and conditions of the APA.

4. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule "**B**" hereto (the "**Monitor's Certificate**"), all of the Companies' respective right, title and interest in and to the Schedule "A" Assets, or such portion thereof as may be agreed to between the Monitor and the Purchaser, shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, claims, trusts or deemed trusts (whether contractual, statutory, or otherwise), assignments, actions, levies, taxes, writes, options, agreements, disputes, debts, liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise or other rights, limitations or restrictions of any nature whatsoever (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

   (a) any encumbrances or charges created by Orders of this Court made in these proceedings;

   (b) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and

   (c) all of the encumbrances listed in Schedule "**C**" hereto;

all of which are collectively referred to as the "**Encumbrances**", which term shall not

include the permitted encumbrances, easements and restrictive covenants and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Schedule "A" Assets are hereby expunged and discharged.

5. Upon presentation for registration in the Land Title Office for the Land Title District of Prince Rupert of a certified copy of this Order, together with a letter from Miller Thomson LLP, solicitors for the Monitor, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to:

   (a) enter the Purchaser as the owner of the Lands identified in Schedule "**D**" hereto, together with all buildings and other structures, facilities and improvements located thereon and fixtures, systems, interests, licenses, rights, covenants, restrictive covenants, commons, ways, profits, privileges, rights, easements and appurtenances to the said hereditaments belonging, or with the same or any part thereof, held or enjoyed or appurtenant thereto, in fee simple in respect of the Lands, and this Court declares that it has been proved to the satisfaction of the Court on investigation that the title of the Purchaser in and to the Lands is a good, safe holding and marketable title and directs the BC Registrar to register indefeasible title in favour of the Purchaser as aforesaid; and

   (b) having considered the interest of third parties, to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances except for those listed in Schedule "**E**".

6. The Monitor is to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

7. For the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Schedule "A" Assets shall stand in the place and stead of the Schedule "A" Assets, and from and after the delivery of the Monitor's Certificate all Claims shall attach to the net proceeds from the sale of the Schedule "A" Assets with the same priority as they had with respect to the Schedule "A" Assets immediately prior to the sale, as if the Schedule "A" Assets had not been sold and remained in the possession or control of the person having had possession or control immediately prior to the sale.

8. Subject to the terms of the APA, vacant possession of the Schedule "A" Assets, including any real property, shall be delivered by the Monitor or any other person in possession of same to the Purchaser at 12:00 noon on the Option Closing Date (as

defined in the APA), subject to the permitted encumbrances as set out in the APA.

9. This Court orders and directs any service provider for the email accounts included as part of the Schedule "A" Assets to transfer and provide access and control over those email accounts to the Purchaser.

10. Notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order in respect of the Companies now or hereafter made pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made by or in respect of the Companies;

the vesting of the Schedule "A" Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute or be deemed to be a transfer at undervalue, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. The activities and conduct of the Monitor in the within proceedings as described in the Thirteenth Monitor's Report, the Fourteenth Monitor's Report and the Fifteenth Monitor's Report, be and are hereby approved and ratified in all respects.

12. The Monitor or any other party have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

13. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

14. Endorsement of this Order by counsel, other than counsel for the Monitor, appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of Gordon G. Plottel
Counsel for Ernst & Young Inc. in its capacity as
Court-appointed Monitor

BY THE COURT

REGISTRAR

Certified a true copy according to the records of the Supreme Court at Vancouver, B.C.
This 15 day of December 20 17
Authorized Signing Officer

RINA MANN

SCHEDULE A

Counsel Name	Party Represented
Jordan Schultz	TELUS Communications Company
H.C. Ritchie Clark, Q.C.	Teliphone Corp., and others
Lisa Hiebert	Bell Canada, Northwestel Inc., Bell Mobility Inc., Bell Aliant Regional Communications Inc.
Ronald J. Argue	Bond Capital Fund V Limited Partnership
George Gregory	TNW Networks Corp.
Heather Ferris	10276375 Canada Inc.
Sandeep Panesar	Self-represented party

SCHEDULE B
MONITOR'S CERTIFICATE

No. S-1610905
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*, R.S.C. 1985, c. C-44, AS AMENDED

AND

IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT OF 8640025 CANADA INC. AND TELIPHONE DATA CENTRES INC.

PETITIONERS

MONITOR'S CERTIFICATE

1. Pursuant to an Order of the Court dated December 14, 2017 (the "**Second Approval and Vesting Order**"), the Court approved the sale, assignment, transfer, and conveyance of all of the customer accounts held by, or in the name of, ChoiceTel Networks Ltd. and Titan Communications Inc., and all of the Optional Purchased Assets listed on Schedule A (collectively, the "**Schedule "A" Assets**") to the Option Notice dated November 27, 2017, (the "**Option Notice**") delivered pursuant to the Amended and Restated Asset Purchase Agreement dated September 20, 2017, (the "**APA**") by Navigata Communications Limited (formerly 1027637 Canada Inc.) (the "**Purchaser**") to ERNST & YOUNG INC., solely in its capacity as Court-Appointed Monitor (the "**Monitor**") of the 86400125 Canada Inc., Teliphone Data Centres Inc., Teliphone Canada Corp. and TNW Networks Corp. (collectively, the "**Companies**"), as vendor, and Navigata Communications Limited (formerly 10276375 Canada Inc.), as purchaser (the "**Purchaser**", and, collectively with the Seller, the "**Parties**"), and ordered that all of the Companies' right, title and interest in and to the Schedule "A" Assets vest in the Purchaser effective upon the delivery by the Monitor of this certificate to the Purchaser confirming: (i) the satisfaction by the Purchaser of the

Purchase Price in relation to the purchase by the Purchaser of the Schedule "A" Assets; (ii) that the conditions to be complied with at or prior to the Closing as set out in Section 6 of the APA have been satisfied or waived by the Monitor or the Purchaser, as applicable; and (iii) the purchase and sale of the Schedule "A" Assets has been completed pursuant to terms and conditions of the APA.

2. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the APA.

THE MONITOR HEREBY CERTIFIES as follows:

(a) The Monitor confirms that the Purchaser has satisfied the Purchase Price, if any, for the Schedule "A" Assets, or such portion thereof as may have been agreed to between the Monitor and the Purchaser, due on the Option Closing Date pursuant to the APA;

(b) The conditions to closing the purchase and sale of the Schedule "A" Assets, as set out in Section 6 of the APA, have been satisfied or waived by the Monitor or the Purchaser, as applicable; and

(c) The transaction contemplated under the Option Notice and the APA has been completed pursuant to the APA.

DATED at the City of Vancouver, in the Province of British Columbia, this_____day December, 2017.

ERNST & YOUNG INC., solely in its capacity as the Court-appointed Monitor of Teliphone Data Centres Inc. *et al.* and not in its personal or corporate capacity

By:

Name:
Title:

SCHEDULE C
ENCUMBRANCES

All Encumbrances other than the Permitted Encumbrances (as defined in the APA) and including the following Financing Statements registered in the Alberta Personal Property Registry:

1. Registration Number 14073035689
2. Registration Number 15012231289
3. Registration Number 15060836877
4. Registration Number 13050314442
5. Registration Number 14073035826
6. Registration Number 12113006953
7. Registration Number 14042812481
8. Registration Number 14042812547
9. Registration Number 14073035689
10. Registration Number 15041329919

All Encumbrances other than the Permitted Encumbrances (as defined in the APA) and including the following Financing Statements registered in the British Columbia Personal Property Registry:

1. Base Registration # 079999H
2. Base Registration # 920830H
3. Base Registration # 920825H
4. Base Registration # 082268I
5. Base Registration # 540353I
6. Base Registration # 410043I
7. Base Registration # 649286I
8. Base Registration # 082269I
9. Base Registration # 540387I
10. Base Registration # 540406I
11. Base Registration # 668283J

12. Base Registration # 82267I
13. Base Registration # 328941H
14. Base Registration # 410043I
15. Base Registration # 649282I
16. Base Registration # 125487I
17. Base Registration # 261613I
18. Base Registration # 275531I
19. Base Registration # 287871I
20. Base Registration # 288044I
21. Base Registration # 313556I
22. Base Registration # 325282I
23. Base Registration # 325323I
24. Base Registration # 345323I
25. Base Registration # 345326I
26. Base Registration # 377947I
27. Base Registration # 403199I
28. Base Registration # 407423I
29. Base Registration # 410043I
30. Base Registration # 551816I
31. Base Registration # 2264191J
32. Base Registration # 414253J
33. Base Registration # 523017J
34. Base Registration #634652J
35. Base Registration # 662831J
36. Base Registration # 079988H
37. Base Registration # 079990H

38. Base Registration # 968970J

All Encumbrances other than the Permitted Encumbrances (as defined in the APA) and including the following Financing Statements registered in the Ontario Personal Property Registry:

1. File Number # 708515883

2. File Number # 706887162

3. File Number # 705231513

4. File Number # 705059046

5. File Number # 698476995

6. File Number # 695569995

7. File Number # 695570004

8. File Number # 683235198

9. File Number # 698479902

10. File Number # 686611962

All Encumbrances other than the Permitted Encumbrances (as defined in the APA) and including the following Financing Statements registered in the Saskatchewan Personal Property Registry:

1. Registration # 301509792

2. Registration # 301019978

3. Registration # 300959089

4. Registration # 301178064

5. Registration # 301178068

6. Registration # 301323021

All Encumbrances other than the Permitted Encumbrances (as defined in the APA) and including the following Financing Statements registered in the Quebec Register of Personal and Movable Real Rights:

1. Registration # 15-0515736-0001

2. Registration # 14-0349727-0002

3. Registration # 17-0214746-0003
4. Registration # 17-0349727-0001
5. Registration # 17-0214746-0002
6. Registration # 15-0296484-0004
7. Registration # 17-0214746-0001
8. Registration # 14-0755907-0002
9. Registration # 16-0491954-0009
10. Registration # 14-0755930-0001
11. Registration #13-0476361-0001
12. Registration # 12-0995708-0004

SCHEDULE D
REAL PROPERTY

Description of Land

Civic Address: 3110 Atwood Street, Terrace, British Columbia
Legal Description:
City of Terrace
PID: 023-995-360
LOT 5 DISTRICT LOT 369 RANGE 5 COAST DISTRICT PLAN PRP41903

Claims/Encumbrances to be Deleted/Expunged

Nature of Charge	Registration Number	Registered Owner of Charge
Judgment	CA4127158	Teliasonera International Carrier, Inc., Incorporation No. BC0968600
Judgment	CA5691689	Teliasonera International Carrier, Inc., Incorporation No. BC0968600

SCHEDULE E
PERMITTED ENCUMBRANCES

Real Property:

Permitted Encumbrances include the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown and the following charges:

Nature of Charge	Registration No.	Registered Owner of Charge
Statutory Right of Way	PL68062	British Columbia Hydro and Power Authority
Statutory Right of Way	PL68063	BC Tel Incorporation No. A1801
Easement	PL68064	Canadian National Railway Company
Statutory Right of Way	PL68067	City of Terrace
Easement (Modification of PL68064)	PM4999	Canadian National Railway Company
Statutory Right of Way	PM12755	City of Terrace

Personal Property:

1. Financing Statement in favour of National Leasing Group Inc., as secured party, and Teliphone Navigata-Westel Communication Inc. as based debtor, registered in the Alberta Personal Property Registry on March 19, 2014 under registration no. 14031908211.

2. Financing Statement in favour of National Leasing Group, as secured party, and Teliphone Navigata-Westel Communication Inc. as base debtor, registered in the British Columbia Personal Property Registry on March 29, 2014 under base registration no. 853976H.

3. Financing Statement in favour of North America Leasing Inc., as secured party, and Teliphone Navigata-Westel Communication Inc. as base debtor, registered in the British Columbia Personal Property Registry on March 31, 2015 under base registration no. 5195451.

4. Financing Statement in favour of National Leasing Group Inc., as secured party, and Teliphone Navigata-Westel Communication Inc. as base debtor, registered in the Ontario Personal Property Registry on March 19, 2014 under reference file no. 694515528.

5. Financing Statement in favour of National Leasing Group Inc., as secured party, and Teliphone Navigata-Westel Communication Inc. as base debtor, registered in the Saskatchewan Personal Property Registry on March 19, 2014 under registration no. 301158532.

APPENDIX F

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *8640025 Canada Inc. (Re),*
2018 BCSC 1259

Date: 20180613
Docket: S1610905
Registry: Vancouver

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

And

In the Matter of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as Amended

And

In the Matter of a Plan of Compromise and Arrangement of 8640025 Canada Inc. and Teliphone Data Centres Inc.

Petitioners

Before: The Honourable Mr. Justice Sewell

Oral Ruling Re Application for Injunction

Counsel for Navigata Communications Limited:	P.J. Roberts
Counsel for the Monitor:	S.J. Nelligan
Counsel for 9151-4877 Quebec Inc. dba Dialek Telecom:	G. Gregory
Counsel for Teliphone Corp:	R. Clark, Q.C. F. Kang
Appearing for the Petitioners, 8640025 Canada Inc. and Teliphone Data Centres Inc.:	Sandeep Panesar
Place and Date of Hearing:	Vancouver, B.C. June 8, 2018
Place and Date of Judgment:	Vancouver, B.C. June 13, 2018

[1] **THE COURT:** This is an application by 9151-4877 Quebec Inc. doing business as Dialek Telecom (Dialek) for an injunction restraining Navigata Communications Limited ("Navigata") from discontinuing services on its network that relate to any of what have been referred to in these proceedings as the Dialek Customers until:

(1) The Monitor has released to Dialek all funds it has collected for services billed through the Dialek billing system for services provided after September 27, 2017; and

(2) The appeal from the Monitor's decision respecting the Claiming Parties' proofs of claim has been finally determined.

[2] The evidence filed in support of this application was somewhat sparse and consisted mainly of correspondence exchanged between counsel for the applicants and counsel for the Monitor.

[3] However, the Monitor filed its 17th Report on June 7, 2018. That Report contains useful background information. I have relied on the factual matters set out in it in considering this application. I am aware that the applicant takes issue with some aspects of the Report. In these reasons I will endeavour to refer to the position of the applicant on any dispute that I consider to be relevant to the issues I must decide.

[4] The petitioners were internet service providers to customers in Canada. The customers relevant to this application are located on Vancouver Island and in the Province of Quebec. The customers in Quebec received television services through the internet and are referred to as the "IPTV customers", and the Vancouver Island customers received cable services.

[5] The background leading up to this application was set out in the Monitor's 17th Report, and I will not refer to it in detail in these reasons.

[6] In summary, however, there have been lengthy court proceedings involving the key question of what assets belong to the petitioners in this *CCAA* proceeding and were therefore available to maximize recovery from the petitioners' business.

[7] An important reason for these disputes is the manner in which the corporate structure of the petitioners was organized. The business of the petitioners was carried on through a number of corporate entities which were related in some way which was not made clear to me in the evidence. The ownership of the assets used to operate the petitioners' global business continues to be in dispute.

[8] At an early stage of these proceedings it became apparent that a restructuring of the petitioners was not practical, and the Monitor was charged with the responsibility of conducting a sale of the assets on, as I understand it, preferably a going-concern basis.

[9] In 2017, the Monitor identified an arm's length party who expressed interest in the assets used in the business. In September 2017, this Court approved a sale of a number of the assets and in the same order approved a process for determining ownership of assets whose ownership was disputed.

[10] The September order established a claims procedure which required entities claiming assets in the possession of the Monitor to make claims to those assets in the first instance to the Monitor. The Monitor was charged with the responsibility of deciding what claims should be accepted. Along with a number of entities, the applicant Dialek claimed a substantial portion of the assets formerly used in the petitioners' business.

[11] In 2017, the Monitor disallowed all or substantially all of the claims of what have been referred to as the Claiming Parties, which included the applicant.

[12] On December 14, 2017, Justice Affleck dismissed the Claiming Parties' appeals from the Monitor's disallowance of their claims. On that date Justice Affleck also approved the sale of a second tranche of assets to Navigata. I have already

referred to that tranche of assets in my previous reasons. In these reasons I will refer to the order as the December Vesting Order. Many of those assets, that is, the assets sold in the December Vesting Order, were the subject of the disallowed claims.

[13] The Claiming Parties obtained leave to appeal the dismissal of their appeals against the Monitor's disallowance of their claims. In reasons delivered on March 14, 2018, the Court of Appeal allowed an appeal of Justice Affleck's dismissal of the appeals from the Monitor's disallowance. The Court found that Justice Affleck had not applied the correct standard of review on the appeal of the Monitor's decisions. It referred the appeal from the Monitor's disallowance back to this Court to be dealt in accordance with the proper standard of review.

[14] However, the Claiming Parties did not obtain leave to appeal the December Vesting Order, and I have already decided this morning that the December Vesting Order has vested title to the assets sold pursuant to Navigata and that the Claiming Parties no longer have the right to the return of those assets, whatever the outcome of their appeal against the disallowance of their claims may be.

[15] As matters now stand, the claims of the Claiming Parties have been disallowed pending their new appeal, which presumably will be heard by Justice Affleck as soon as he can be made available to do so.

[16] In late September 2017, the Monitor notified the Claiming Parties that Navigata did not wish to acquire the IPTV customers and that it was prepared to release the amounts received with respect to those customers after September 2017 to the appropriate claiming party.

[17] In February 2018, the Monitor advised the Claiming Parties that Navigata had no interest in acquiring the Vancouver Island customers' accounts and that the Monitor was prepared to release the amounts it held from those accounts to the appropriate claiming party.

[18] The Monitor, however, determined that it required a court order to approve the release of funds received by it in respect of the IPTV and Vancouver Island customers. On April 17, 2018, a number of Claiming Parties delivered an application for payment of the funds held in respect of the released customers to Gregory & Gregory in trust for Dialek. Argument on that motion commenced on April 19, 2018, but could not be completed before Justice Affleck. That application remains outstanding.

[19] Until the end of April 2018, Navigata provided the services and infrastructure necessary to maintain the services to the IPTV and Vancouver Island customers. However, Navigata was not being paid for those services.

[20] According to the Monitor's 17th Report, Navigata first realized in early May 2018 that it was providing those services without compensation. At that time or shortly thereafter, Navigata notified the Monitor that there were some services running on its network with respect to the IPTV and Vancouver Island customers and that it intended to discontinue those services within two weeks if they were not migrated off the Navigata network.

[21] As a result of further discussions among the parties, that deadline was extended until last Friday. As of the date of preparing these reasons, I am not aware if the services are still being provided. At the hearing of the application, I declined to grant an interim injunction that the services continue to be provided by Navigata, but I did ask counsel for Navigata to inform his client that it would reasonable for it to continue to provide those services pending my decision.

[22] On this application no one was able to explain to me what technical steps are necessary to migrate the services to the customers in question from the Navigata network. Instead all parties blame the other for the failures to migrate the services to another service provider.

[23] While it was not expressly stated in the evidence, it is apparent to me that even if the Claiming Parties are successful in their appeals from the disallowance of

their claims, they will not have the necessary infrastructure to service the Vancouver Island and IPTV customers.

[24] In response to these developments, Dialek has brought this application.

Position of the Parties

[25] The applicant submits that it is entitled to an injunction requiring Navigata to continue to provide the infrastructure and services necessary to maintain the services until the Monitor releases all funds it has collected for services billed through the Dialek billing system to it and until its appeal from the Monitor's decision respecting the Claiming Parties' proofs of claim have been decided.

[26] Navigata's position is that the applicant has not made out a case for an injunction based on the applicable test, and that the application should be dismissed.

[27] For the reasons that follow I have decided that the application must be dismissed.

[28] All parties argue this application on the principles applicable to an interlocutory injunction or a stay of proceedings pending an appeal. Those principles are set out in the seminal decision of the Supreme Court of Canada in *Manitoba (A.G.) v. Metropolitan Stores Ltd.*, [1987] 1 S.C.R. 110, reiterated in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[29] In determining whether to grant an injunction, a court must decide whether it is just and convenient to do so considering the strength of the applicant's case, the risk of irreparable harm if the injunction is granted and the balance of convenience. This has often been stated as a three-part test as follows. The applicant must show:

1. That it has raised a fair question with respect to the right it asserts;

2. That it will suffer irreparable harm if the injunction is not granted;

3. That the balance of convenience favours the granting of the injunction.

[30] With respect to the raising of a fair question, the jurisprudence makes it clear that this is usually a low threshold. Nevertheless, an applicant must demonstrate that it has at least an arguable case against the party it seeks to enjoin. This principle is set out at para. 41 of *RJR-MacDonald* as follows:

> What then are the indicators of "a serious question to be tried"? There are no specific requirements which must be met in order to satisfy this test. The threshold is a low one. The judge on the application must make a preliminary assessment of the merits of the case. The decision of a lower court judge on the merits of the *Charter* claim is a relevant but not necessarily conclusive indication that the issues raised in an appeal are serious: see *Metropolitan Stores*, *supra*, at p. 150. Similarly, a decision by an appellate court to grant leave on the merits indicates that serious questions are raised, but a refusal of leave in a case which raises the same issues cannot automatically be taken as an indication of the lack of strength of the merits.

[31] It is arguable that the applicant is seeking a mandatory injunction and must therefore show a strong *prima facie* case. In this regard, see the recent decision in *R. v. Canadian Broadcasting Corp.*, 2018 SCC 5. However, for the purposes of this application I do not need to decide that the applicant must show a strong *prima facie* case.

[32] I conclude that the applicant's complaints are against the Monitor rather than Navigata. The applicant has not articulated any basis on which it can make a claim against Navigata. It has no contractual relationship with it, nor has it alleged any tortious actions on its part. It is also apparent that Navigata is not obtaining any benefit from the services in question that could lead to any restitutionary remedy against it.

[33] When I pressed counsel on this point in argument, he submitted that an order under the broad remedial powers found in s. 11 of the *Companies' Creditors Arrangement Act* provided the jurisdiction to make the order his client seeks.

[34] However, the difficulty I have with that submission is that s. 11 permits me to make orders with respect to the debtor company. However, in this case neither the applicant nor the respondent is the debtor company. In addition, the power granted

under s. 11 is to further the objectives of the *CCAA*. I am not persuaded that the order sought by the applicant would further the orderly restructuring of the affairs of the debtor companies.

[35] In my view the order sought would, if anything, be contrary to the orderly restructuring of the affairs of the debtor companies because it would establish a precedent that a third party who purchases assets pursuant to a court-approved sale which vest those assets in that party free and clear of all encumbrances or claims might still be subject to injunctive relief at the behest of another interested party in the proceedings. In my view such a doctrine would have a deleterious effect on the efficacy of sales arranged through the *CCAA* process.

[36] In addition, it is common ground that Navigata is not being paid for the services it provides. The order sought here would require it to continue to provide services not to the debtors but to the applicant without immediate payment. Such an order would appear to be contrary to s. 11.01 of the *CCAA* which provides:

> 11.01 No order made under section 11 or 11.02 has the effect of
>
> (a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or
>
> (b) requiring the further advance of money or credit.

[37] Counsel has not provided me with any authority in which a party with a claim against someone else may obtain an injunction against a third party not implicated in the claim being made.

[38] In the first decision I gave this morning, I found that the Claiming Parties have no claim *in specie* to any assets transferred by the September or December vesting orders. In his argument Mr. Gregory conceded that the use of at least some of the vested assets must be utilized by Navigata to continue to support the IPTV and Vancouver Island customers.

[39] As I can see no ground upon which this Court could order Navigata to use its assets to benefit the Claiming Parties, I conclude that the applicant has not shown that it has raised a fair question against Navigata and the application must fail on that ground alone.

[40] I am also not satisfied that the applicant has demonstrated a real risk of irreparable harm.

[41] The applicant has not shown that it has any real prospect of being able to continue to service the IPTV and Vancouver Island customers. It complains that Navigata has not provided it with the technical information it needs to migrate those customers, but I have no evidence that it has the business infrastructure in place, given the effect of the two vesting orders, to continue to provide services to them without utilizing Navigata's network.

[42] In my view, given the vesting of the majority of the network assets in Navigata, damages are the sole remedy available to the Claiming Parties if they succeed in their appeal from the Monitor's orders.

[43] It seems to me that those damages are assessable. I therefore find that the applicant has failed to establish a risk of harm that cannot be compensated for by an award of damages.

[44] I also find that the balance of convenience does not favour the applicant. In my view, as I have already indicated, the granting of an injunction against Navigata would erode the efficacy of the vesting provisions of the sale orders and interfere with the finalization of the adjustments to the purchase price and to the December sale order.

[45] On the other hand, the applicant has not demonstrated to me how granting the order sought would facilitate the continuation of its business. I was given no evidence as to how the applicant proposed to provide services to the customers in

question if it wins its appeals or obtains the funds held by the Monitor in respect of the IPTV and Vancouver Island customers.

[46] Finally, on the issue of balance of convenience, I take into account the unwillingness or inability of the applicant to give an undertaking as to damages in this case. While the giving of an undertaking is not mandatory, it is a factor that the court must take into consideration in assessing the balance of convenience. The giving of an undertaking that can be enforced is usually a necessary element of the protection of a party against whom an injunction is granted. Given the paucity of evidence I have about the financial viability of the applicant, if I had been inclined to grant an injunction I would have required an undertaking and asked for submissions and evidence on the ability of the applicant to honour that undertaking and on the question of whether security for that undertaking should have been provided.

[47] For the foregoing reasons, the application for an injunction is dismissed and Navigata is entitled to its costs of the application.

SUBMISSIONS OF COUNSEL ON COSTS

[48] THE COURT: With respect to the injunction application, I remain of the view that costs are appropriate. The application for an injunction was between two parties who are not subject directly to this *CCAA* proceeding, and the relief sought was relief against Navigata specifically. I am therefore of the view that Navigata is entitled to its costs of the injunction application. In the circumstances those costs should be payable forthwith after assessment.

[49] Based on Mr. Gregory's submissions and upon further reflection, I find that the costs of the application to strike should be decided by the judge who hears what is left of those applications; in other words the judge who hears the appeal.

[50] It seems to me that the question of the overall merits of that application is relevant to the issue of costs on that application. So costs on the application to strike will be in the discretion of the judge who hears the balance of that application.

"SEWELL J."

APPENDIX G

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *8640025 Canada Inc. (Re),*
2018 BCSC 1260

Date: 20180613
Docket: S1610905
Registry: Vancouver

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

And

In the Matter of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as Amended

And

In the Matter of a Plan of Compromise and Arrangement of 8640025 Canada Inc. and Teliphone Data Centres Inc.

Petitioners

Before: The Honourable Mr. Justice Sewell

Oral Ruling Re Application to Strike Notice of Application

Counsel for Navigata Communications Limited:	P.J. Roberts B. McRadu
Counsel for the Monitor:	G. Plottel S.J. Nelligan
Counsel for 9151-4877 Quebec Inc. dba Dialek Telecom and others:	G. Gregory
Counsel for Teliphone Corp:	R. Clark, Q.C. F. Kang
Appearing for the Petitioners, 8640025 Canada Inc. and Teliphone Data Centres Inc.:	Sandeep Panesar
Place and Date of Hearing:	Vancouver, B.C. June 1, 4 and 5, 2018
Place and Date of Judgment:	Vancouver, B.C. June 13, 2018

[1] **THE COURT:** In this *CCAA* proceeding, Navigata Communications Limited ("Navigata"), applies pursuant to Rule 9-5(1)(d) of the *Supreme Court Civil Rules* and the inherent jurisdiction of this court for an order striking out paragraphs B and E(a), (b) and (c) of the application filed on May 2, 2018, by a number of companies listed in paragraph 1 of part 1 of the application. For ease of reference I will refer to the companies who filed the May 2nd application as the "Claiming Parties".

[2] The paragraphs of the May 2nd application that Navigata seeks to strike out seek the following relief:

> B. A declaration that TNW is entitled to all of the assets it claims in its proofs of claim.
>
> E. To return to TNW and the Third Party Entities:
>
> a. the assets belonging to them as set out in the Court of Appeal list;
>
> b. the assets identified as belonging to them in 2007 10 02 GG SP ASSET SEPARATION (Updated 2017 10 02_ clean; and
>
> c. The customers identified as theirs as set out in CUSTOMERS AND CUSTOMER LISTS (EU OG SP)_ FINAL 2017 09 22.

[3] It is conceded that these paragraphs are identical to the relief sought by these parties in December 2017 before Justice Affleck, who is the supervising judge. On December 14, 2017, after ten days of hearings, Justice Affleck dismissed those applications, which had been brought as appeals from decisions of the Monitor disallowing the claims of the Claiming Parties to be the lawful owner of the assets.

[4] The appeal from the Monitor's decisions was heard at the same time as an application by the Monitor for court approval of a sale of a number of assets to Navigata (the December Vesting Order). In that order Justice Affleck approved the sale, which included many but not all of the assets that were claimed by the Claiming Parties. The December Vesting Order contained a declaration that many of the assets claimed by the Claiming Parties were rightfully owned by the petitioners and capable of being sold by the Monitor, and that upon delivery of a

Monitor's Certificate certifying completion of the sale, title to the transferred assets would vest in the purchaser.

[5] Those declarations are found in paragraph 3 and 4 as follows:

> 3. This Court orders and declares that all of the Schedule "A" Assets are rightfully owned by the Companies and capable of being sold to the Purchaser by the Monitor pursuant to the terms and conditions of the APA.
>
> 4. Upon delivery by the Monitor to the Purchaser of a certificate substantially in the form attached as Schedule "B" hereto (the "Monitor's Certificate"), all of the Companies' respective right, title and interest in and to the Schedule "A" Assets, or such portion thereof as may be agreed to between the Monitor and the Purchaser, shall vest absolutely in the Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), assignments, actions, levies, taxes, writes, options, agreements, disputes, debts, liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise or other rights, limitations or restrictions of any nature whatsoever (collectively, the "Claims") including, without limiting the generality of the foregoing:
>
> (a) any encumbrances or charges created by Orders of this Court made in these proceedings;
>
> (b) all charges, security interests or claims evidence by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and
>
> (c) all of the encumbrances listed in Schedule "C" hereto;
>
> all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Schedule "A" Assets are hereby expunged and discharged.

[6] I understand that some of the assets that were sold were not claimed by the Claiming Parties. It was not made clear to me precisely what overlap exists between the assets that were sold and those claimed by the Claiming Parties. The assets that were sold in the December Vesting Order were referred to as the "Schedule A Assets" and are listed in Appendix A to the Monitor's 15th report.

[7] With the exception of some assets that the Monitor did not consider capable of being marketed, all of the claims of the Claiming Parties to assets controlled by the Monitor were disallowed.

[8] On December 19, 2017, the Claiming Parties applied for leave to appeal the orders of Justice Affleck dismissing their appeals from the Monitor's disallowance of their claims and granted the December Vesting Order.

[9] The relief sought in the Application for Leave to Appeal was as follows:

> AND FURTHER TAKE NOTICE THAT THE COURT OF APPEAL WILL BE MOVED AT THE HEARING OF THIS APPLICATION FOR AN ORDER THAT
>
> > The order of the Honourable Mr. Justice Affleck dismissing the Claiming parties' appeal from the Monitor's determination respecting their proofs of claim be reversed and the Claiming parties' appeals be allowed; and
> >
> > The order of the Honourable Mr. Justice Affleck approving a sale and vesting order be reversed, and the application to approve the sale and vesting order be dismissed.

[10] On January 5, 2018, Justice Frankel of the Court of Appeal granted leave to appeal the order dismissing the Claiming Parties' appeal from the Monitor's disallowance of their claims to the assets but did not grant leave to appeal the December Vesting Order.

[11] On March 14, 2018, the Court of Appeal allowed the appeal from the dismissal of the appeals from the Monitor's disallowance of the claims of the Claiming Parties. There is not yet an entered order from the Court of Appeal, but it is apparent from their reasons that the Court of Appeal did not address the December Vesting Order.

[12] I have reviewed both the reasons of Justice Frankel granting leave to appeal and the reasons of the Court of Appeal. It is clear to me that both Justice Frankel and Justice Newbury, who gave the reasons of the Court on the appeal, were both proceeding on the basis that the sole issue before them was the appeal from the

dismissal of the Claiming Parties' appeal from the Monitor's disallowance of their claims to the assets.

[13] After the Court of Appeal's decision, the Claiming Parties brought the application which Navigata seeks to have struck in part on this application.

[14] The following issues arise on this application:

1. Can Navigata apply under Rule 9-5(1)(d) to strike out an application brought in this *CCAA* proceeding?

2. If Rule 9-5(1)(d) of the *Supreme Court Civil Rules* is not available to Navigata, does this Court have the inherent jurisdiction to strike out a portion of the Claiming Parties' notice of application on the basis that it is an abuse of process.

3. Are the impugned portions of the Claiming Parties' notice of application barred either by the doctrines of issue estoppel and *res judicata* or as an abuse of process as a collateral attack on the December vesting order?

[15] Counsel for Teliphone Corp. raised a preliminary objection to the hearing of this application on the basis that Rule 9-5 does not apply to notices of application. This objection was initially met with an objection raised by counsel for Navigata that Teliphone Corp. has no standing on this application because it had no interest in the relief sought either by the Claiming Parties or by Navigata.

[16] It is my view that Teliphone Corp. had standing to appear on this application. It was served with the petition in this matter and was named as an application respondent. Rule 8-1(7) of the *Supreme Court Civil Rules* directs that a party who brings an application must give notice of that application to all parties of record. Rule 8-1(9) provides that any person who is served with an application may respond to that application. In this case Teliphone Corp. was a party of record and was

served with the application. Navigata's notice of application was served on Teliphone, and Teliphone therefore has standing to appear on the application.

[17] However, I do not accept that I lack jurisdiction to make an order striking out portions of the claimant's notice of application. Counsel for Teliphone Corp. referred me to a number of decisions of the Federal Court that held a provision of the *Federal Court Rules* permitting pleadings to be struck out did not permit striking out of a notice of application. In my view those cases are distinguishable for a number of reasons.

[18] Firstly, the Federal Court does not have inherent jurisdiction.

[19] Secondly, the rule under consideration in one of the cases referred to, *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588, was restricted to striking out pleadings or anything in a pleading. A "pleading" is defined in the *Federal Court Rules* as a document whereby an action in the trial division was initiated. *David Bull Laboratories* must therefore be understood in the context in which it was decided. In that case there was a restrictive definition of a document which could be struck out on a motion to strike.

[20] Rule 9-5(1) is in my view broader. It permits the court to strike out the whole or any part of a pleading, petition or any other document. In *Walker v. John Doe*, 2014 BCSC 830, Justice Butler found that the word "document" contained in Rule 9-5 means a document which is required to formally set out a party's position, claim or defence.

[21] The application brought by the Claiming Parties seeks substantive relief. It was brought in these *CCAA* proceedings. Teliphone Corp. does not challenge the jurisdiction of this court to grant the relief sought by the Claiming Parties. The only means by which the Claiming Parties could seek that relief under the *Supreme Court Civil Rules* was by way of a notice of application. In my view the notice of application falls squarely within the definition of "document" set out by Justice Butler at para. 8 of *Walker*.

[22] In addition, the central point raised on this application is that the relief sought by the Claiming Parties is an abuse of process because it constituted a collateral attack on the December Vesting Order. The Supreme Court of Canada has held that a collateral attack on a previously decided matter is an abuse of process. This Court has inherent jurisdiction to control its own process and to prevent that process from being abused. I am therefore of the view that I have the jurisdiction to consider whether the impugned portion of the Claiming Parties' notice of application constitutes an abuse of process and if I so find, to grant an appropriate remedy.

[23] The critical question before me on that issue is whether the impugned claims are an abuse of process, either on the basis of issue estoppel, *res judicata* or under the broader doctrine of abuse of process set out by the Supreme Court of Canada in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63. In this regard, I accept the submissions of counsel for the Claiming Parties that I should only strike out the claims if it is plain and obvious that they are an abuse of process.

[24] I am satisfied that any relief sought by the Claiming Parties that seeks to challenge the title of Navigata to the assets described in the December Vesting Order, that is the Schedule A assets, is an abuse of process because it constitutes a collateral attack on the clear terms of that order.

[25] I find that paragraphs 3 and 4 of the December Vesting Order decided that the Monitor had the right to sell the Schedule A assets and to transfer good title to those assets and that the assets were the property of the petitioners.

[26] The Claiming Parties appeared on the application for the December Vesting Order and filed a notice of application for leave to appeal that order. I find that it is plain and obvious that they did not obtain leave to appeal that order and that the order must be taken as final and binding on them.

[27] In the course of his submissions, Mr. Gregory said that the Claiming Parties did not pursue leave to appeal the December Vesting Order because they were misled into believing that title had vested in Navigata by reason of the Monitor

delivering the Monitor's Certificate contemplated that order. He conceded that if title had vested there would be no basis on which to proceed with an appeal of the order, agreeing with counsel for Navigata that any such appeal would have been moot. In this regard, see: *Regal Constellation Hotel Ltd. Re*, [2004] O.J. No. 2744, a decision of the Ontario Court of Appeal.

[28] However, Mr. Gregory says that there is an exception to the rule against making collateral attacks on judgments when a party has been materially misled by the conduct of the other party. He submits that pursuant to paragraph 4 of the December Vesting Order, title to the assets sold did not vest in Navigata until the sale was closed and the purchase price paid, as evidenced by a Monitor's Certificate to that effect. Paragraph 4 provides that upon delivery of a Monitor's Certificate, title to the Schedule A assets vests absolutely in Navigata.

[29] Mr. Gregory submits that the Monitor's Certificate required the Monitor to confirm that the purchase price for the Schedule A assets had been paid before title vested. He says that the Monitor falsely certified that the full amount of the purchase price had been paid when, in fact, it had not been. He submits that his clients were unaware that the purchase price had not been paid at the time of the application for leave to appeal and therefore were misled into not pursuing leave to appeal that order at that time.

[30] I cannot accept his submissions on this point.

[31] I find that the Monitor's Certificate was not misleading. The December Vesting Order provided that title to the Schedule A assets would vest upon delivery of the Monitor's Certificate in the form attached as a schedule to the order. The Certificate required the Monitor to certify only that that portion of the purchase price due on the closing date had been satisfied. I find that the portion of the purchase price due on the closing date had been satisfied at the time of the delivery of the Monitor's Certificate.

[32] It was apparent from the terms of the Asset Purchase Agreement that there would be adjustments made to the purchase price after closing. The Claiming Parties were aware of the terms of the Asset Purchase Agreement and must be taken to have had notice that some portion of the purchase price would not be paid until the amount properly owing after adjustments had been determined. I therefore see no merit in the submission that the Monitor's Certificate was in any way misleading or did not meet the requirements of the December Vesting Order.

[33] The final point raised by Mr. Gregory was that on December 18, 2017, the Monitor and Navigata amended the Asset Purchase Agreement approved by the court on December 14. The Claiming Parties submit that this amendment was not authorized by the court and was a material deviation from the terms of the sale that was approved. However, it was unclear to me what consequences should flow from such an authorized amendment.

[34] I am not persuaded that the amendment has any bearing on this application. The amendment was made after the closing date on which title to the Schedule A assets had already vested in Navigata. I therefore do not see how the terms of the amendment agreement assist the Claiming Parties in pursuing a claim to any of the Schedule A assets.

[35] In addition, the Claiming Parties did not satisfy me that the amendment affected any material change in the terms of the transaction approved by the court. The December Vesting Order contemplated that there may well be minor changes made to the manner in which the asset purchase agreement was performed and, in my view, the amended agreement fell within that description.

[36] I see nothing in the amendment, which was disclosed to the Court of Appeal on December 21, 2017, which affects the terms of the December Vesting Order. I note that the Claiming Parties raised no objection to the amendment at the time it was disclosed, that is in late December 2017.

[37] I therefore find that the execution of the addendum is not relevant to this application.

[38] I am satisfied that it is not open to the Claiming Parties to challenge the approval of sale of the Schedule A assets to Navigata or to assert any rights against Navigata with respect to those assets.

[39] I therefore order that claim B be struck out, except to the extent that it claims assets that have not been sold pursuant to either the December Vesting Order or the earlier September order approving the sale of some assets, and that paragraph E(a), (b) and (c) be struck out to the extent that they seek return of any assets transferred to Navigata pursuant to the December Vesting Order.

"SEWELL J."

APPENDIX H

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *8640025 Canada Inc. (Re),*
2019 BCSC 1739

Date: 20191010
Docket: S1610905
Registry: Vancouver

In the Matter of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as Amended

and

In the Matter of the *Canada Business Corporations Act*,
R.S.C. 1985, c. C-44, as Amended

and

In the Matter of a Plan of Compromise and Arrangement of
8640025 Canada Inc. and Teliphone Data Centers Inc.

Before: The Honourable Mr. Justice Affleck

Reasons for Judgment

Counsel for Teliphone Corp.:	H.C.R. Clark, Q.C.
Counsel for the Monitor, Ernst & Young Inc.:	G. Plottel S. Nelligan
Counsel for Telus Corp.:	J. Schultz
Counsel for Bell Canada, Northwestel Inc., Bell Mobility Inc., Bell Aliant Regional Communications Inc.:	L. Hiebert
Counsel for Bond Capital Fund Limited:	R. Argue
Counsel for Navigata Communication Ltd.:	H. Ferris
Place and Date of Trial/Hearing:	Vancouver, B.C. August 14-15 and September 25, 2019
Place and Date of Judgment:	Vancouver, B.C. October 10, 2019

Introduction

[1] Teliphone Corp., which is the former parent of the petitioner 8640025 Canada Inc. (“864”), but which is not itself a petitioner, applies for an order replacing Ernst & Young Inc., as the court appointed monitor (“the monitor”), with LW Murphy Ltd. Teliphone Corp. also seeks a declaration that it is a secured creditor of 864.

[2] The extensive background of this litigation, leading up to the present application, is described in pages 4 through 22 of reasons indexed at *8640025 Canada Inc. (Re)*, 2019 BCSC 8. In brief Teliphone Corp. had submitted “proofs of claim” to the monitor which were rejected. An appeal to this Court was rejected. Leave to appeal to the Court of Appeal was granted. The appeal was allowed on the question of the appropriate standard of review and the matter remitted to this Court for reconsideration. The appeal from the rejection of the proofs of claim was again dismissed.

[3] Bell Canada, Northwestel Inc., Bell Mobility Inc. and Bell Aliant Communications Inc. (collectively “The BCE Group”) oppose the applications. The BCE Group is a creditor of the petitioners and is a “critical supplier” to the petitioners pursuant to an order of this Court.

[4] Navigata Communications Limited (“Navigata”) opposes the applications. It is a subsidiary of Distributel Communications Ltd. (“Distributel”). The monitor had negotiated the sale of certain assets of the petitioners to a nominee of Distributel. A vesting order was made by this Court in September 2017 from which no appeal was taken. Nevertheless Benoit Laliberté a principal of Teliphone Corp. has made clear his intention to seek to replace the monitor with LW Murphy Ltd. and thereafter seek to revisit the September 2017 vesting order. Teliphone Corp. takes the position that Navigata has no standing on this application.

[5] Cascade Divide Enterprises Inc. (“Cascade”) made no oral submissions on these applications but filed an application response. It is a senior secured creditor of the petitioners. It opposes the applications and largely adopts the position of Navigata emphasizing that the evidence leads to the conclusion that Mr. Laliberté hopes to regain

control over the assets that are now vested in Navigata as well as other assets under the care and control of the monitor.

[6] The Canada Revenue Agency opposes the applications on the basis that a change of monitors would be harmful “to the process”.

[7] Telus Communications Company (“Telus”) opposes the applications. It is an unsecured creditor of the petitioners with a claim in excess of $10,000,000 and is a second priority secured creditor. It adopts the submissions of Bell and Navigata.

[8] Bond Capital Fund V Limited Partnership (“Bond”) is the “DIP lender”. Bond did not file an application response but Mr. Argue for Bond advised that his client is opposed to the replacement of the monitor.

The Submissions of Teliphone Corp.

[9] The monitor must be replaced because it has played an excessively adversarial role in these proceedings which has led to “long delay and great cost” and therefore a “fresh set of eyes” ought to be brought to bear which will “perhaps lead to resolution of all of the disputes”. Examples of improper advocacy are given.

[10] The monitor took the position in its second report early in these proceedings that the companies within the TNW group, which includes the petitioners and Teliphone Corp., were so closely intertwined making it impossible to rely on the books of account and records of the petitioners. This position is said to be the start of what Teliphone Corp. describes as “advocacy creep”. On April 6, 2017 an order was made by this Court which provided in part:

> 6. Forthwith, the Monitor shall review, inventory and otherwise investigate the affairs and assets of [TNW] Networks, and shall determine what Property (as defined below} of Networks was not derived directly or indirectly from the Property of the Petitioners, their subsidiaries, or any other entitles subject to the Applicants' security (the "Networks Property"), and report the same to the Court. Any Property of Networks which the Monitor is unable to determine the origin of shall not be Networks Property, and for greater certainty, until determined as set out herein, none of the Property shall be Networks Property. Any party may challenge the determination of what constitutes Networks Property by application to this Court within 10 business days following the Monitor's report on the same and which matter shall be determined in this proceeding on a summary basis."

[11] Instead of adhering to that order the monitor is said to have then "enticed" Distributel into an agreement to purchase all of the assets used in the business of the petitioners and then approved that transaction based on an interpretation of the April 6, 2017 order which the Court of Appeal later held was incorrect.

[12] Following the outcome of that appeal this Court made an order providing for a proof of claims process involving consultations between a representative of the monitor and a representative of the petitioners. They were to report to the monitor in an effort to reach a three-way consensus. Notwithstanding that order the monitor "immediately" instructed its representative to prepare a report on the derivation of various assets following which the monitor decided ownership without consultation. The monitor's decision was appealed leading to the hearing and decision of December 14, 2017 (referred to in para.18 in the reasons indexed at 2019 BCSC 8) which led to that decision being overturned and a new hearing ordered. Nevertheless the decision was reaffirmed by this Court. Leave to appeal the reaffirmation decision has been granted.

[13] Teliphone Corp. submits that on the leave application the monitor advanced "extraordinary submissions" that the application for leave was "frivolous and vexatious, an abuse of process and that leave was being sought only to be obstructionist".

[14] Teliphone Corp. submits the monitor owes a duty of impartiality. Reference is made to *Winalta Inc. (Re)*, 2011 ABQB 399 at paras. 68 and 77. Even when a monitor engages in litigation in the course of its duties its role is that of an officer of the court, see: *Confederation Treasury Services Ltd. (Re)*, 1995 CanLII 7386 (Ont. C.J.).

[15] In *Pine Valley Mining Corp. (Re)*, 2008 BCSC 446 there is the following at para. 17:

> [17] I have concluded that the Monitor's 4th Report (and any supplementary reports concerning the inter-company accounting) is admissible for purposes of the trial, but his conclusion as to the characterization of the payments as debt or equity are not admissible as an expert opinion. In reaching this conclusion I have considered the fact that the Monitor is an officer of the Court. He is the eyes and ears of the Court. His role is to assist the Court. To permit either party to use his conclusions on the very question the Court must decide as opinion evidence offends the principle that he must remain entirely neutral as between competing claims of the various stakeholders. The Monitor must be insulated from the

> adversarial nature of the contested claim; he should not be fearful that, as a result of stating his opinions, he will become embroiled in the litigation in an adversarial way. I have already decided that the summary trial is a trial de novo. It is not an "appeal" from the Monitor's findings. I have already decided that PVM carries the burden of proving its whole claim. In this case, it is convenient, and perhaps necessary, to use the accounting portion of the Monitor's Report, for a fair and summary adjudication of the inter-company claim, but the same argument for convenience cannot be made out for the Monitor's characterization of the payments; and, in any event, to admit the Monitor's conclusions on that issue would be to expose the Monitor unnecessarily to the adversarial process. This issue differs from one in which the Court relies on the business judgment of the Monitor such as the approval of the sale of assets or a liquidation analysis as in the ***Canadian Airlines (Re)***, 2001 ABQB 146 case.

[16] The monitor it is submitted has become the principal advocate supporting its own reports, recommendations and decisions. It is pointed out that the monitor "carried the argument" in opposition to the appeal from the rejection of Teliphone Corp.'s proofs of claim.

[17] The asserted "long delays and great cost" are said to be occasioned by the conduct of the monitor. Teliphone Corp. does not offer evidence to support this assertion but apparently relies on the fact that there has been numerous steps undertaken in this litigation and much time occupied since it began in November 2016.

[18] LW Murphy Ltd. is prepared to take on the role of monitor "without the benefit of an administrative charge". Instead it would rely on Teliphone Corp. to pay its fees.

[19] It is not necessary to find cause to substitute a different monitor. When Ernst & Young was substituted for Boale Wood Inc. no cause was shown. It was the wishes of the creditors and particularly the wishes of Bond which influenced that change.

Submissions of The BCE Group

[20] Boale Wood Inc. was the initial monitor and was replaced on the application of a number of creditors including Bond because of the view that they shared that the multi-jurisdictional nature of the business and the highly complex regulated nature of the telecommunications industry in which the petitioners were involved required a different monitor. Further, Boale Wood did not have the resources needed to carry out the role of monitor, and to manage a sales process.

[21] The April 6, 2017 order gave the monitor the broad powers of a receiver found in the language of the Model Receivership Order, including the power to take possession and exercise control over the property of the petitioners as well as Teliphone Canada Corp. and TNW Networks Corp. and to market their property for sale.

[22] The claim of Teliphone Corp. that it is a creditor cannot be substantiated. In May 2017 a Florida law firm wrote to the monitor asserting that Teliphone Corp. is the largest secured creditor of the petitioners. The monitor responded pointing out that Teliphone Corp. had not submitted a timely proof of claim in accordance with the claims process order made January 30, 2017 and thus its claim is barred. On June 23, 2017 Teliphone Corp. submitted a proof of claim out of time which is challenged by various creditors. There has been no evidence presented that the monitor allowed the claim. Nor has an application been brought to extend the time to file a proof of claim.

[23] The BCE Group relies on para. 19 of the claims process order which provides for a Claims Bar Date which is subject to a later date as agreed by the monitor or as the court may direct, failing which the claim is “forever barred, estopped and enjoined”. Paragraph 23 of the claims process order required the monitor, within four business days of the Claims Bar Date, to publish on its website a claims register showing the nature and amount of proofs of claim received and to keep the register regularly updated. Paragraph 45 of the claims process order bars Teliphone Corp.’s claim to be a creditor:

> The Claims Bar Date and the Restructuring Claims Bar Date, and the amount and status of every Allowed Claim, as determined under the Claims Process, including any determination as to the nature, amount, value, priority or validity of any Claim, including any secured claim, shall continue in full force and effect and be final for all purposes (except as expressly stated in any Notice of Disallowance or Revision or settlement or Claims Officer’s Determination or order of the Court), including in respect of any Plan and voting thereon (unless provided for otherwise in any Order of Court), and, including for any distribution made to Creditors of any of the Petitioners, whether in these CCAA Proceedings or in any of the proceedings authorised by this Court or permitted by statute, including a receivership proceeding or bankruptcy affecting any of the Petitioners.

[24] Section 11.7(3) of the *Companies' Creditors Arrangement* Act [*CCAA*] reads:

> On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

[25] Unless Teliphone Corp. can establish it is a creditor, which it has failed to do, it is not entitled to take advantage of that provision in the *CCAA*.

[26] Furthermore even if Teliphone Corp. could demonstrate it as a creditor it has failed to demonstrate "it [is] appropriate in the circumstances" to replace the monitor. It is not correct that no cause need be shown to substitute the monitor.

[27] In *Lutheran Church Canada (Re)*, 2016 ABQB 419 the court held that it must "balance a potential risk to creditors … arising from the alleged potential conflict of interest against prejudice to creditors … arising from inevitable delay, duplication of effort and high costs involved with replacing the monitor at this very late stage of the proceeding". At para. 108 there is the following:

> I note that the creditors' committees who represent the majority of Depositors are strongly opposed to a replacement Monitor. They pointed out that the plans have been approved by the requisite majorities, and delay and additional cost does not serve the interests of the general body of creditors, particularly without what they consider to be any justifiable reason.

[28] The BCE group points out that none of the creditors support the application to replace the monitor.

[29] On the issue of the monitor acting like a litigant The BCE Group says:

a) the April 6, 2017 order gave the monitor the expanded powers of a receiver to sell the assets to the petitioners as well as some of the assets of TNW Networks Corp.; and

b) the fact that some of the parties to these proceedings left it to the monitor on occasion to make submissions to this Court and the Court of Appeal should not lead to an inference that the monitor was acting on its own.

> These lengthy and highly contentious proceedings have imposed a significant financial burden on creditors. Their decision not to add to the monitor's submissions has been driven by economic factors.

[30] An attack on the monitor "is an attack on the integrity of the *CCAA* process". The conduct of the monitor complained of by Teliphone Corp. cannot support a conclusion that it has failed to meet its obligation to the court and must be removed. In *YBM Magnex International Inc. (Re)*, 2000 CanLII 28169 (Alta. Q.B.) affirmed at 2001 ABCA 305 at para. 87 there is the following:

> A receiver is often obliged to make difficult decisions that are not universally accepted. Those decisions will naturally be unpopular in some quarters. If it were otherwise, there would rarely be contested court applications, as all potential stakeholders would have identical interests and agree on a mutually beneficial course of action. A court must presume that its receiver, as an officer of the court, acts properly and impartially, unless there is clear evidence to the contrary. Further, the Receiver has decided to bring applications for directions to the court, and left those decisions in the court's hands. It is difficult to suggest any preferential treatment by the Receiver when it is merely a request for court direction.

[31] The submission that LW Murphy Ltd. will not benefit from a charge and will be paid directly by Teliphone Corp. does not acknowledge that no evidence has been offered of the proposed financial arrangements between Teliphone Corp. and LW Murphy Ltd., nor evidence to satisfy the court that the proposed monitor will act in the best interests of all the stakeholders. On the contrary there can be no confidence that the monitor will not be constrained "in an economic way" by Teliphone Corp.

[32] Further there is no evidence that the proposed monitor has the experience, expertise and resources needed to perform the role of monitor in the present circumstances. In *Imperial Tobacco Canada Limited (Re)*, 2019 ONSC 1684 at para. 10 the court found on the evidence that:

> Insofar as the proposed monitor is concerned [it was] satisfied that FTI Consulting Canada Inc. ("FTI") is a suitable monitor and should be appointed in these proceedings pursuant to s. 11.7 of the CCAA. FTI is an experienced monitor who frequently acts in this capacity in CCAA proceedings. FTI is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.

[33] Section 11.7(2) of the *CCAA* provides that no trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, may be appointed as a monitor if the trustee was, in the previous two years, a director, officer or employee of the company; was related to the company, or to a director or officer of the of the company, or was the auditor, or accountant, or a partner of an employee of the company. No evidence is offered to satisfy those statutory requirements.

[34] Lastly The BCE Group submits Mr. Laliberté is "affiliated" with Teliphone Corp. He signed its proof of claim and is listed as its contact person. Recently he signed a notice of intention to act in person on behalf of the petitioners. Teliphone Corp.'s failure to provide evidence of the independence, qualifications and financial arrangements with LW Murphy Ltd. "is fatal to its application" to replace the monitor.

The Submissions of Navigata

[35] The application to replace the monitor is "odd" for several reasons. No reference was made by Teliphone Corp. in its notice of application, nor in its oral submissions, to the provision in the *CCAA* which requires an applicant to be a creditor. No authorities were relied on to establish the test for substitution. Nor is any evidence offered that the monitor has done anything wrong in performing its role. There is simply a submission from Teliphone Corp. that the monitor has been too adversarial. The court should hesitate to go down what is characterized as that "rabbit hole". A monitor is an officer of the court as are lawyers and various others who perform roles under the supervision of the court. There is no impropriety in an officer of the court advocating an outcome of a proceeding.

[36] It is said to be "odd" that there is no affidavit from a principal of Teliphone Corp. complaining about the conduct of the monitor. The affidavits relied on by Teliphone Corp. to support the present application are all dated from 2017. Little, if any, assistance is given to the court to establish a reason to replace the monitor in late 2019.

[37] The replacement of Ernst & Young Inc. with a new monitor would require an exercise of discretion keeping in mind the purposes of the *CCAA* which are *inter alia*:

a) to permit an insolvent company to avoid bankruptcy;

b) to preserve the insolvent company as a viable operation and to reorganize its affairs to the benefit not only of the debtor but of creditors;

c) to maintain the status quo for a period of time to provide a structured environment in which an insolvent company can continue to carry on business;

d) to protect an insolvent company from proceedings by creditors that would prevent it from carrying out the terms of a compromise or arrangement; and

e) in appropriate circumstances to affect a sale, winding up or liquidation of the debtor company and its assets.

[38] The position of Teliphone Corp. on this application does not acknowledge any of those purposes. No authority speaks of “a fresh set of eyes” as part of the test to substitute the monitor.

[39] In exercising its discretion the court ought to be wary of the reasons put forward by Teliphone Corp. to appoint LW Murphy Ltd. as the substitute monitor. Reference is made to oral reasons of December 14, 2017, in which I dismissed an appeal from the rejection of Teliphone Corp.’s proofs of claims, and commented that the monitor had “properly considered” the reliability of certain affidavits of the management of the TNW Group of companies “with a critical eye”.

[40] Navigata refers to the “Factual Basis” in part 2 of Teliphone Corp.'s notice of application which speaks:

a) of a settlement reached by the petitioners with Bond, but Teliphone Corp. does not mention that Bond opposes the present application;

b) of the monitor “spearheading” the opposition to the claims of Teliphone Corp., but does not mention that all creditors favour this approach;

c) of the “long delay and great cost” caused by the positions taken by the monitor but no evidence is offered to support the view that the monitor has improperly caused excessive delay or expense; and

d) while “the terms of the substitution” of LW Murphy Ltd. would include a provision that fees will no longer be incurred by the estate. Teliphone Corp. does not acknowledge that the proposed substitution would place Teliphone Corp. in a conflict of interest.

[41] Attached as exhibits to an affidavit filed by Navigata is a series of emails from Mr. Laliberté. I will refer to some of them without correcting the grammar or syntax.

[42] The first is dated April 25, 2019 and is addressed to Matt Stein and others. Mr. Stein is the chief executive officer of Distributel. That email reads in part:

> Now, I would like to give you an heads up. We will pursue relentlessly the return of all third parties assets, its client as they were and all cash collected as well as all assets that were so called vested but not paid as per the Court approved ARAPA [Asset Purchase Agreement to Distributel’s nominee which received court approval]. Not sure what you think is your position on this, but we have a different understanding of our legal position.
>
> That being said, I am inviting you to consider immediately to cancel the ARAPA and return all assets to the Petitioners as well as placing ail disputed third parties assets in a segregated entity until the now approved third Appeal is heard in the next few months. I am opened to discussions on how to make this happened, but for a very limited time.
>
> Matt, for whatever is left of our relationship, I strongly invite you to think about this very carefully before Monday. The consequences are almost unlimited for Distributel, Navigata as well as yourself and Mel as directors. You and the Monitor already lost 2 times in Court of Appeal and at the next hearing it will be final.
>
> We are furious and I have to protect my stakeholders namely: My 6 Children's.
>
> Before over reacting, you should sit down with Mel, take a white board and figure out what legal paths we will take. Then multiply it by 2 and you will be close to what we are going to get in.

[43] An email dated April 29, 2019 reads in part:

> Now Bond Capital is long time gone and settled, Bell Canada is no longer participating in this process and are walking on eggs shell since we are officially a Wireless Operator with the support of the regulator and ISED and Ernst & Young will be replaced as Monitor.

> So you are right, we will involve the monitor in this matter, except it will be a new on that will be appointed by the Court. Ritchie will be filling an application today to that effect.
>
> As soon as the new Monitor will be appointed, we will review very carefully every single obligations that the Monitor needed to fill full along with the purchaser and this since the ARIO, ARAPA and the TSA where approved by the Court.
>
> I can only advise that all Court orders will have to be followed and respected. I am of the view that you took a portion of my asset and you haven't pay as per the Court approved ARAPA and have not respected the conditions of payment amongst other thing. This is completely different then the decision of Justice Sewell in TNW Network's application last year. As such I want my company back, its assets and business in the exact same state it was in September 2017.
>
> At 2 occasions and soon most probably a third time, the highest Court of BC has ruled against you and the Monitor and in our favor. We must be right somewhere while you are being wrong, no?
>
> To be clear, we are demanding that all third parties disputed business goes back to their legitimate owners now (in the same state they were when you received the temporary custody of them) and we are demanding a complete review by a new monitor of the Court approved agreements and we shall enforce all of them accordantly.
>
> Matt, just to make sure you really understand what I mean; I am taking back my business.
>
> You should consider making arrangement to do so, otherwise the summer will be very hot. I am sure that you understand that by taking asset into Distributel and staff you lifted the corporate veil between your Navigata Communication and Distributel.
>
> [Emphasis in original.]

[44] An email dated May 27, 2019 addressed to Owen Gilbert an employee of Distributel reads in part:

> As the President of the company called Navigata Communication Ltd (not to confuse with my company Navigata Communication Ltd registered in Saskatchewan) and as the manager of the Transitional Service Agreement for the unpaid vested assets and disputed assets, we are demanding that you answer this letter in detail by Friday Mai 31 4pm
>
> If you are not complying with our request, Owen, I have to informing you that we will be left with no other choice but to take action against yourself and Navigata Communication Ltd. You currently have a fiduciary duty to us as the primary officer of the company. I trust that you understand what we are trying to convey to you. You are a smart enough person you know what I mean.
>
> Furthermore, you are most probably aware that we have circulated an Application to replace E&Y as Monitor of the Petitioners. If the Monitor is finally replaced other actions will be taken as necessary in a near future.

> As we are getting ready for the third appeal where certain or all disputed assets will have to be returned to third parties one way or the other, we are very concerned about the state of the business currently under your management. In order to be in a position to mitigate the damages caused to the business, we need your full collaboration in this matter.
>
> [Emphasis in original.]

[45] Navigata submits the emails make clear that if LW Murphy Ltd. is substituted as monitor Mr. Laliberté intends to benefit himself through control of the monitor.

[46] On the question of its standing while Teliphone Corp. did not press this point in oral argument Navigata submits that it is the sale of assets of the petitioners to its parent Distributel which engages its interests and gives its standing on this application. It is apparent that Mr. Laliberté who controls Teliphone Corp. intends to attack that sale through a substituted monitor if the means can be found to do so.

[47] Navigata relies on *Griffiths McBurney & Partners v. Ernst & Young YMB Inc.*, 2001 ABCA 305 at paras. 9 and 10:

> [9] The basic request is to remove the receiver or, in any event, remove it from a significant part of its powers and functions. The tests for removing a receiver are tougher tests than the tests for not appointing that person or company as receiver in the first place. At this stage in this extremely complex and expensive receivership, it would do a great deal of harm to remove the receiver. This is a comparatively late stage.
>
> [10] There was no evidence before the chambers judge or us that there is any other potential alternate realistic receiver who would be capable of this big job, but is not exposed to similar criticisms of possible conflicts. Because of the nature of this particular case, the job of receiver calls for a lot of facilities and expertise. There are very few international or big national insolvency firms in Canada, and most of them seem to be tied into a chartered accounting (audit) firm. So if one were to remove the present receiver in whole or in part, and attempt to find another entity to replace it as receiver, one would simply face the same problem of putting into place similar screening mechanisms.

[48] Navigata also relies on *Schembri v. Al Way* 2011 ONSC 4021, at paras. 46 and 48:

> [46] Removing a Receiver is a serious matter. Mr. Way had called the Receiver's integrity into question, and this issue had to be determined. From Mr. Schembri's point of view, the removal motion was tactical, and designed to derail the sales process so that Mr. Way could gain an advantage in it. To some extent, I tend to agree.

> …
>
> [48] When I look at the timing of the removal motion, coupled with Mr. Schembri's later unsolicited bids for the three properties, I see a tactical move to wrest control of the process from the Receiver, and to prevent Mr. Schembri from purchasing Waterloo or to force him to pay significantly more for it than its appraised value.

[49] There is no evidence offered that LW Murphy Ltd., which on such evidence as is available appears to be a small firm, has anything to offer in handling a complex receivership such as the present one.

[50] This application is a "tactical application" brought by Mr. Laliberté through Teliphone Corp. seeking to overturn orders of this Court and thereby to prevent the transfer of assets to Navigata.

The Submissions of Telus

[51] Mr. Schultz for Telus made three submissions on the question of whether Teliphone Corp. is a creditor thereby giving it standing pursuant to s. 11.7(3) of the *CCAA* to apply to substitute the monitor. The first is that Teliphone Corp. failed to file a proof of claim in time to avoid the Claim Bar Date. The second is that Teliphone Corp. has never applied to extend the time to file a proof of claim, and the third is that on the evidence it is actually not a creditor.

[52] In reply to Telus, Teliphone Corp. points out that in June 2017 it filed a notice of application to extend the Claims Bar Date and Teliphone Corp.'s claim remains on the current proof of claim register kept by the monitor and it has "received no official challenge to its security position" from the monitor.

Discussion

[53] In its notice of application Teliphone Corp. seeks "a declaration that [it] is a secured creditor of the petitioners". Teliphone Corp. does not now apply for an extension of time to overcome the Claims Bar Date which was two and half years ago in March 2017. Thus, at the date of the present applications the Claims Bar Date applies. The result is that Teliphone Corp. is not now a creditor, as it must be to take advantage of s. 11.7(3) of the *CCAA* to apply to substitute the monitor. Teliphone Corp. has no

standing to bring the present application to substitute the monitor. That application must be dismissed.

[54] Even if I was invited, which I am not, to treat the present application as one to extend time to overcome the Claims Bar Date, in my opinion for the following reasons it would not be appropriate to substitute LW Murphy Ltd. for the monitor:

a) I am not persuaded the monitor has conducted itself in an inappropriately adversarial manner or has engaged in any other impropriety in relation to its conduct as the monitor and eventually as the receiver;

b) There is no evidence of LW Murphy Ltd.'s ability to conduct the role of monitor in the present circumstances. This proceeding and the receivership have been complex and demanding of considerable expertise. I have no basis to determine whether LW Murphy Ltd. has that expertise. The proposition that LW Murphy Ltd. would be simply "a new set of eyes" is not persuasive;

c) At this late stage of these proceedings the expense and delay in an already costly and protracted receivership, which would be necessitated by substituting a new monitor, is not justified; and

d) The absence of evidence of the intended financial arrangements between Teliphone Corp. and LW Murphy Ltd., particularly in the light of Mr. Laliberté's aggressive emails, does not persuade me that the risk that LW Murphy Ltd. would find itself in a conflict of interest would not be realized when it would be entirely dependent on Teliphone Corp. for its fees.

[55] I decline to decide if Teliphone Corp. is a secured creditor. It may have been a secured creditor but lost that status by failing to meet the Claims Bar Date. In my opinion an application for a declaration that Teliphone Corp. is a secured creditor is of practical use only if it is coupled with an application to extend the time to overcome the

Claims Bar Date. The application for a declaration that Teliphone Corp. is a secured creditor of the petitioners in adjourned.

"Affleck, J."

APPENDIX I

SECOND OPTION NOTICE

TO: ERNST & YOUNG INC., in its capacity as Court-appointed Monitor of 8640025 Canada Inc., Teliphone Data Centres Inc., and Teliphone Canada Corp., and by Court Order on behalf of TNW Networks Corp. (the "**Vendor**")

RE: Amended and Restated Asset Purchase Agreement made between the Vendor and Navigata Communications Limited (formerly 1027637 Canada Inc.) (the "**Purchaser**") dated September 20, 2017, as amended by Addendum No. 1 to the Amended and Restated Asset Purchase Agreement dated December 18, 2017 and Addendum No. 2 to Amended and Restated Asset Purchase Agreement dated January 10, 2018 (the "**APA**")

DATE: January 12, 2018

WHEREAS:

A. All capitalized terms used herein but not defined shall have the meanings given to such terms in the APA;

B. The Vendor and the Purchaser entered into the APA to facilitate the purchase of the assets, properties and undertakings of the Companies in accordance with the terms and conditions of the APA;

C. The APA granted the Purchaser the Option to acquire all or certain of the Optional Purchased Assets, subject to the terms and conditions thereof;

D. In order to exercise the Option, the Purchaser was required to send the Option Notice dated November 27, 2017 (the "**Option Notice**") to the Monitor; and

E. The Option Notice permitted the delivery of this Second Option Notice to further exercise the Option.

NOW THEREFORE, for good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Purchaser hereby notifies the Vendor as follows

1. The Purchaser hereby notifies the Vendor that it wishes to acquire all of the remaining Optional Purchased Assets which have not previously been acquired by the Purchaser:

   (a) including without limitation, the Optional Purchased Assets listed on **Schedule A** hereto; **but**

   (b) excluding the Excluded Assets and the Optional Purchased Assets listed on **Schedule B** hereto,

   (collectively, the "**Remaining Purchased Assets**").

2. The Purchaser hereby requests that the Vendor, as soon as reasonably possible, make a motion to the Court for the approval of the sale, assignment, transfer and conveyance to the Purchaser of the Remaining Purchased Assets pursuant to the Second Subsequent Approval and Vesting Order (as defined in the Option Notice).

3. Prior to the granting of the Second Subsequent Approval and Vesting Order in respect of the Remaining Assets, the Purchaser hereby retains the right to decline to acquire any of the Remaining Purchased Assets, and provide a revised Schedule B hereto and designate any of the Remaining Purchased Assets as Excluded Assets under the APA, such that they will not be acquired by the Purchaser.

4. Notwithstanding the terms and conditions of the APA:

   (a) the Purchaser shall have the right, exercisable at the sole option of the Purchaser, both before and after the acquisition of any of the Optional Purchased Assets pursuant to the terms and conditions of the APA, the Option Notice, the Subsequent Approval and Vesting Order, this Second Option Notice and/or the Second Subsequent Approval and Vesting Order, to decline to acquire or return to the Vendor and the Companies any of such Optional Purchased Assets (including the Schedule A Assets (as defined in the Option Notice) and the Remaining Assets) if, in the opinion of the Purchaser, such Optional Purchased Assets are not desired by the Purchaser, provided that the Purchaser's right described in this Section 4(a) shall terminate, with respect to any Optional Purchased Asset, on the date that is 90 days after the later of: (a) expiration of the appeal period for the Second Subsequent Approval and Vesting Order under which the Purchaser obtained title to that Optional Purchased Asset; and (b) the disposition of any appeal of the Second Subsequent Approval and Vesting Order under which the Purchaser obtained title to that Optional Purchased Asset;

   (b) if the Purchaser exercises such option to decline to acquire or return to the Vendor any of such Optional Purchased Assets, such Optional Purchased Assets will be deemed to have never been transferred to the Purchaser and remain the property of the Vendor and the Companies; and

   (c) such Optional Purchased Assets shall, for the purposes of the Purchase Price Adjustment, the Floor Price and all other calculations in respect of the Purchase Price, be deemed to have not been acquired.

5. Nothing herein shall affect the sale and assignment of the Required Purchased Assets and the Schedule A Assets (as defined in the Option Notice) that were sold and assigned in accordance with the Approval and Vesting Order and the Subsequent Approval and Vesting Order, and, if **Schedule** A hereto includes any of such assets it shall be deemed to be amended to remove such Required Purchased Asset(s) and such Schedule A Assets (as defined in the Option Notice).

6. The effectiveness hereof is conditional upon the receipt, by the Vendor and the Purchaser, of a fully executed copy of this Second Option Notice.

7. This Second Option Notice may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be considered one and the same agreement. A signed facsimile, telecopied or electronic copy (including Portable Document Format) of this Second Option Notice shall be effectual and valid proof of execution and delivery.

8. This Second Option Notice shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable therein, and the Parties agree to, and do hereby, attorn to the exclusive jurisdiction of the British Columbia Supreme Court in relation to any matter relating to this Second Option Notice.

[Signature Page Follows]

DATED as of the date first written above.

NAVIGATA COMMUNICATIONS LIMITED

By: _____
Name: Gerry Vanderpost
Title: CFO

The Vendor hereby acknowledges and agrees to the terms and conditions of this Option Notice.

ERNST & YOUNG INC., solely in its capacity as Court-appointed Monitor of 8640025 Canada Inc., Teliphone Data Centres Inc. and Teliphone Canada Corp.

By: _____
Name: Michael Reid
Title: Vice President

ERNST & YOUNG INC., , on behalf of TNW Networks Corp., and not in its personal or corporate capacity

By: _____
Name: Michael Reid
Title: Vice President

SCHEDULE A
SPECIFIC INCLUSIONS TO REMAINING PURCHASED ASSETS

1. All Consents, Contracts, Leases, Information Systems and Books and Records related to any of the Purchased Assets which are deemed necessary by the Purchaser in order to use or operate the Purchased Assets and which have not already been acquired.

2. All of the remaining IP address resources of the Companies, including, without limitation, the following:

   (a) IPv6 Space:

      (i) 2607:7200::/32 (AS5071)

3. All of the Companies' remaining autonomous system (AS) numbers.

4. All of the Companies' remaining domain names, including, without limitation, the following:

   (a) canadaonenet.com

   (b) canadaonenet.com

   (c) choicetelnetworks.ca

   (d) choicetelnetworks.com

   (e) cloud-phone.ca

   (f) dns-dr.net

   (g) galaxytelecom.net

   (h) galnet.ca

   (i) orioncommunications.com

   (j) orioncommunications.com

   (k) rocketnetworks.ca

   (l) rocketnetworks.com

   (m) teliphone.biz

   (n) teliphone.ca

   (o) teliphone.ca

(p) teliphone.co

(q) teliphone.com

(r) teliphone.eu

(s) teliphone.eu

(t) teliphone.in

(u) teliphone.info

(v) teliphone.me

(w) teliphone.mobi

(x) teliphone.mobi

(y) teliphone.tv

(z) teliphone.us

(aa) teliphone.us

(bb) teliphonecorp.com

(cc) teliphoneinc.com

(dd) titantelco.com

(ee) titantelco.net

(ff) tnwcanada.com

(gg) tnwcorp.com

(hh) tnwfax.com

(ii) tnwnetwork.com

(jj) tnwnetworks.com

(kk) tnwusa.com

(ll) westel.com

5. All of the Companies' remaining trademarks, including, without limitation, the following:

Owner	Description	Application #	Trademark #
Registrant: Navigata Communications Inc.	NAVIGATA DESIGN	1132729	TMA636756

6. All of the Companies' remaining business and trade names, including, without limitation, the following:

   (a) ChoiceTel Networks Ltd.

   (b) TNW Networks Corp.

   (c) TNW

   (d) Teliphone Navigata-Westel Communication Inc.

   (e) Teliphone

   (f) Titan Communications Inc.

   (g) Cloud Phone Inc.

   (h) Rocket Networks

   (i) ChoiceTel

   (j) TNW Networks

   (k) Teliphone Navigata-Westel

   (l) Titan

   (m) Cloud Phone

7. The following remaining Facilities:

   (a) LAT 50-03-30, LG 123-00-12, Whistler, BC (Alta Lake Snow cat shed)

   (b) LAT 55-24-40, LG 122-39-04, Mackenzie BC

   (c) LAT 55-01, LG 123-06, Prince George, BC (Butternut Hill Passive)

   (d) M659.30 Chetwynd Communications Building, Chetwynd BC (CN Facility)

   (e) 102 11th Ave S Room 114, Cranbrook BC

(f) LAT 55-25-21, LG 122-37-51 MacKenzie Pine Le Moray Park, BC

(g) LAT 55-43-11, LG 122-64-39 Mackenzie Pine Le Moray Park, BC

(h) 106 - 455 Columbia Street, Kamloops BC

(i) LAT 50-39, LG 121-57, Lillooet BC

(j) 1300 Main Street, Lillooet BC

(k) LAT 55-25-50, LG 123-01-57, Morfee Mountain, BC

(l) UNSRVED Land, RG 5, Coast District, Murray Ridge, BC

(m) 221 West Esplandade, 2nd Floor, North Vancouver, BC

(n) 3377 - 3rd Avenue, Smithers BC

(o) 555 West Hastings - 200 Granville - BC

(p) 4000 Seymour Place Saanich BC

(q) LT 52-59-02N, LG 122-27-44W Parcel ID 013-950-487 Block L District lots 6682/6683

(r) 3120 Highway 16 Terraca

(s) 1522 East Highway 16 Vanderhoof, BC

(t) Elleh - for CN Rail - Northern Spur Bell Mobility

(u) Elleh for Ministry of Forests - Northern Spur Bell Mobility

(v) Fontsa for CN Rail - Northern Spur Bell Mobility

(w) Gleam for CN Rail - Northern Spur Bell Mobility

(x) Muskwa for CN Rail - Northern Spur Bell Mobility

(y) Muskwa for Ministry Forest - Northern Spur Bell Mobility

(z) Zeke for CN Raile - Northern Spur Bell Mobility

(aa) Zeke for Spectra Energy - Northern Spur Bell Mobility

(bb) 320 - Unit #4 - Jessop Ave Saskatoon SK

8. Any and all spectrum Permits and Licenses

9. Any and all Permits and Licenses relating to any support structure agreements

10. Any and all Permits and Licenses relating to any municipal access agreements

11. Any and all easements, rights of way, surface rights, Permits and Licenses or otherwise granted in favour of the Companies

12. Any and all Permits and Licenses that are required and necessary to operate the Business

13. All of the Companies remaining Permits and Licenses, including, without limitation, the following Licenses & Permits issued to 864 by Innovation Science and Economic Development Canada:

License No.	Call Sign	License Reference	Station Location or Area
010691856-001	VYB246 VYB247	CHF52 CHF53	ENTERPRISE BC LONE BUTTE BC
010691858-001	VYB245 VYB251	VBI971 CHF566	SAVONA BC TUKTAKAMIN MTN BC
010691859-001	VYB245 VYB254	VBI971 VBI972	SAVONA BC DUFFERIN HILL B
010691860-001	VYA883 VYB251	CFG567 CFG566	RUTLAND BC TUKTAKAMIN MOUNTAIN BC
010691861-001	VYB254 VYB277	VBI972 CIN443	DUFFERIN HILL BC 455 COLUMBIA STREET KAMLOOPS, BC
010691863-001		VBI972 VBI973	DUFFERIN HILL, KAMLOOPS BC 235 1ST AVENUE, KAMLOOPS BC
010691865-001	VYB254 VYB287	VBI972 VBI973	DUFFERIN HILL, KAMLOOPS BC 235 1ST AVENUE, KAMLOOPS BC
010691866-001	VYB245 VYB248	VBI971 XLB916	SAVONA BC PAVILLION BC
010704314-001	VYA883 VYA961	VBH285 CHF41	CHARLIE HILL BC WABI HILL BC
010704315-001	VYA883 VYA962	VBH285 VBH288	CHARLIE HILL BC FT. ST. JOHN POP
010704316-001	VYA883	VBH285 VEM553	CHARLIE HILL BC CHARLIE LAKE SPECTRA OFFICE
010704317-001		VBH285 FT. ST. JOHN	FT. ST. JOHN POP INTERNET GUYS – FSJ

License No.	Call Sign	License Reference	Station Location or Area
010704318-001	VYA961 VYB371	CHF41 CHF43	WABI HILL BC BESSBOROUGH, BC
010704319-001	VYB371 VYB372	CHF43 VBH287	BESSBOROUGH BC DAWSON CREEK POP
010704320-001	VYA961 VYA573	CHF41 VBH267	WABI HILL BC BOULDER BC
010704321-001	VYA573 VYA576	BOULDER BC HASLER BC	BOULDER BC HASLER BC
010704323-001	VYA573 VYA574	BOULDER BC VBH26 NELSON CREEK BC	BOULDER BC NELSON CREEK BC
010704324-001	VYA961 VYA590	WABI HILL BC CHF4 CHETWYND BC CFG90	WABI HILL BC CHETWYND BC
010704325-001	VYA961 VYA590	WABI HILL BC CHF4 CHETWYND BC	WABI HILL BC CHETWYND
010704327-001	VYA961 VYB350	WABI HILL BC CHF4 CHETWYND NORTHERN	WABI HILL BC CHETWYND NORTHERN LIGHTS COLLEGE
010704328-001	VYA961 VYB349	WABI HILL BC CHF4 CHETWYND SPECTRA	WABI HILL BC CHETWYND SPECTRA OFFICE
010704329-001	VYA573 VYB347	BOULDER BC VBH2 MORFEE BC VBH26	BOULDER BC MORFEE BC
010704331-001	VYB347 VYB348	MORFEE VBH266 MACKENZIE POP VBH	MORFEE MACKENZIE POP
010704332-001	VYB347 VYB337	MORFEE VBH266 CHINGEE MOUNTAIN	MORFEE CHINGEE MOUNTAIN BC
010704333-001	VYB321 VYB343	PRINCE GEORGE BC	PRINCE GEORGE BC (AIRPORT HILL) MILBURN MTN BC

License No.	Call Sign	License Reference	Station Location or Area
		MILLBURN MTN BC	
10704334-001	VYB343 VYB344	MILLBURN MTN BC WILLIAMS LAKE REPEATER	MILBURN MTN BC WILLIAMS LAKE REPEATER
010704337-001	VYB338 VYB337	SUMMIT LAKE BC CH CHINGEE MOUNTAIN BC	SUMMIT LAKE BC CHINGEE MOUNTAIN, NC
010704340-001	VYB327 VYB329	SINKUT MOUNTAIN CFG MURRAY RIDGE BC	SINKUT MOUNTAIN MURRAY RIDGE BC
010704341-001	VYB327 VYB325	SINKUT MOUNTAIN BC VANDERHOOF, BC (CBC)	SINKUT MOUNTAIN BC VANDERHOOF, BC (CBC)
010704343-001	VYB321 VYB430	CHF49 CKO459	PRINCE GEORGE – BC – AIRPORT HALL PRINCE GEORGE – BC – FORT STREET
010704345-001	VYB321 VYB429	CHF49 VFG686	PRINCE GEORGE – BC – AIRPORT HALL PRINCE GEORGE – BC – PG SECONDARY SCHOOL
010704346-001	VYB321 VYB428	CHF49 CGM655	PRINCE GEORGE – BC – AIRPORT HALL PRINCE GEORGE – BC – SPECTRA ENERGY
010704347-001	VYB344 VYB427	CHF51 VEJ842	WILLIAMS LAKE BC – REPEATER WILLIAMS LAKE BC – RNC VEJ842
010704348-001	VYB344 VYB317	VEJ842 CHF52	WILLIAMS LAKE BC – RNC ENTERPRISE BC
010705143-001	VYB321 VYB322	PRINCE GEORGE BC TABOR MOUNTAIN BC	PRINCE GEORGE BC (AIRPORT HILL) TABOR MOUNTAIN BC (GLOBAL SITE)

License No.	Call Sign	License Reference	Station Location or Area
010705144-001	VYB321 VYB338	PRINCE GEORGE BC SUMMIT LAKE BC	PRINCE GEORGE BC (AIRPORT HILL) SUMMIT LAKE BC
010549857-001			NORTHERN BC
010694026-001	VBI606 VYA642	COLUMBIA NETWORKS	
010694418-001	VBI669 VBI668		VANCOUVER BC 200 GRANVILLE STREET NORTH VANCOUVER BC 850 HARBOURSIDE DR
010694419-001	VBI669 VXJ790		VICTORIA BC 1810 BLANSHARD STREET BRUCE PEAK BC (NAVIGATA)
010694421-001	VBI668 CHG280		VICTORIA BC 1810 BLANSHARD STREET VICTORIA BC – 4000 SEYMOURE PLACE
010694422-001	CHF23 CHF24		BRUCE PEAK BC (NAVIGATA) MILL BAY BC BENCH ELEMENTARY
010694423-001	CHF23 XLB913		SQUAMISH BC (REPEATER SITE) GARIBALDI BC
010694424-001	CHF72 XLB914		ALTA LAKE REPEATER B.C. DEVINE BC
010694425-001	XLB915 XLB916		MISSION MOUNTAIN BC PAVILION BC
010694426-001	VBI606 VBI307		VANCOUVER BC 200 GRANVILLE ST NORTH VANCOUVER BC – 949 WEST 3RD ST
010694427-001	CHF72 CHF36		ALTA LAKE REPEATER B.C. WHISTLER BC LORIMER ROAD
010694428-001	XLB914 XLB915		DEVINE BC MISSION MOUNTAIN BC
010694431-001	VBI307 VFT515		NORTH VANCOUVER BC – 949 WEST 3RD ST VANCOUVER BC 204-275 FELL AVE

License No.	Call Sign	License Reference	Station Location or Area
010694432-001	XLB916 XMD932		PAVILLION BC LILLOOET STATION BC
010694433-001	CHF25 VBI606		BOWEN ISLAND BC VANCOUVER BC 200 GRANVILLE ST
010694435-001	CHF72 XLB913		ALTA LAKE REPEATER BC GARIBALDI BC
010694437-001	VBI606 CJL797		VANCOUVER BC 200 GRANVILLE ST NORTH VANCOUVER BC 555 BROOKSBANK
010694438-001	CHF24 CHF25		WATTS POINT BC – BC RAIL SITE BOWEN ISLAND BC
010287947-002		NEW	TERRACE BC

14. The Equipment Listed on Annex 1 to this Schedule A.

15. Any and all of the Contracts (as amended, restated, supplemented or replaced) with the customers listed on Annex 2 to this Schedule A.

ANNEX 1 TO SCHEDULE A
EQUIPMENT FORMING PART OF REMAINING PURCHASED ASSETS

(See Attached)

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Condult size
100Mile	Crown land right of way	1029	5th & Birch St 100 Mile House	Lone Butte Site lat 51 deg 33' 13" N long 121 deg 11' 13" W	6	SM	4	Direct buried armoured cable	n/a
Kelowna	In leased duct space	1003	Landmark business park 1632 Dickson Ave building 1	Landmark business park 1632 Dickson Ave building 2	12	SM	0	duct	n/a
Kelowna	In leased duct space	1002	Landmark business park 1632 Dickson Ave building 2	Landmark business park 1632 Dickson Ave building 3	24	SM	2	duct	n/a
Kelowna	In leased duct space	1001	Landmark business park 1632 Dickson Ave building 3	Landmark business park 1615 Dickson Ave	12	SM	2	duct	n/a
Nanaimo	Combination of Telus duct, Telus support structure and Port of Nanaimo duct	1006	17 Church St Nanaimo	100 Port St Nanaimo	24	SM	2	In Telus duct for 835m, then on Telus aerial support structure for 1266, then into Port of Naniamo duct for 370m	1x4"

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size
Prince George	On Telus infrastructure	1014	Plaza 400 1044 5th Ave Pr George V2L 5G4	Gunn Road Pr George	36	SM	12	Aerial	n/a
Prince George	On Telus / Hydro infrastructure	1015	AllStream CO 1300 1st Ave Pr George	Gunn Road Pr George via splice point at 2nd Ave & Ontario St Pr George	12	SM	2	Aerial / Telus duct	2" entrance
Prince George	Crown land right of way, City of Pr George right of way	1016	Plaza 400 1044 5th Ave Pr George V2L 5G4	Gunn Road Pr George	6	MM	0	Direc buried armoured cable except for 3" conduit (600m) across Yellowhead bridge and in 2" conduit for approx 150m for entrance into Plaza 400	2" entrance
Prince George	Private land right of way, BC Rail Properties	1017	Pr George Exchange Room	Gunn Road Pr George	4	SM	4	Direct buried except for entrance	2" entrance

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size
	right of way, MOTH right of way							into buildings	
Salt Spring	On Telus infrastructure	1018	343 Lower Ganges Rd Saltspring Island	120 Rainbow Dr Saltspring Island	24	SM	8	Aerial	n/a
Salt Spring	On Telus infrastructure	1019	120 Rainbow Dr Saltspring Island	112 Rainbow Dr Saltspring Island	6	SM	2	Aerial	n/a
Smithers	On BC Hydro aerial support structure	1004	Corner of 11th Ave and Vacouver St	3377 3rd Ave Smithers	6	MM	0	Aerial	n/a
Stewart	On Telus areial support structure	1005	Stewart liquor distribution branch	Stewart school	6	MM	0	Aerial	n/a
Terrace	On Telus areial support structure	1007	4634 Park Ave Terrace	Splice point Walsh and Sparks St	48	SM	6	Aerial	n/a
Terrace	On Telus areial support structure	1008	Splice point Walsh and Sparks St	3411 Munro St	6	SM	2	Aerial	n/a
Terrace	On Telus areial support structure	1009	Splice point Walsh and Sparks St	3605 Munro St	6	SM	2	Aerial	n/a
Terrace	On Telus areial support structure	1010	Splice point Walsh and Sparks St	3430 Sparks St	6	SM	2	Aerial	n/a
Terrace	On Telus areial support structure	1011	Splice point Walsh and Sparks St	4620 Loen Ave	6	SM	2	Aerial	n/a

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size
Tumbler ridge	1 Navigata cable and 2 Telus cables in conduit	1012	Tumbler Ridge Health Centre 220 Front St Tumbler Ridge	Tumbler Ridge Secondary School 180 Southgate Rd Tumbler Ridge	12	SM	4	In Telus duct 350m and Navigata entrance conduit (2") for 40m	4"
Tumbler ridge	1 Navigata cable in conduit	1013	Tumbler Ridge Secondary School 180 Southgate Rd Tumbler Ridge	Tumbler Ridge Elementary School 355 Monkman Way Tumbler Ridge	6	SM	2	In Telus duct for 220m, Navigata duct for 120m, Hydro aerial support structure for 1.13 km back to Navigata conduit for 50m	4"
Vancouver	Conduit Seymour St (3 cables in conduit)	1024	200 Granville St Vancouver	515 W Hastings St Vancouver	24	SM	24	Conduit	1x4" (three 1 1/4" inner ducts)
Vancouver		1025	200 Granville St Vancouver	515 W Hastings St Vancouver	24	MM	16	Conduit	
Vancouver		1026	200 Granville St Vancouver	555 W Hastings St Vancouver	48	SM	34	Conduit	

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size
Vancouver	Conduit Cordova St (1 cable in conduit)	1027	200 Granville St Vancouver	555 W Hastings St Vancouver	144	SM	2	Conduit	1x4"
Vancouver	Conduit Cordova St (1 cable in conduit)	1028	200 Granville St Vancouver	515 W Hastings St Vancouver	144	SM	67	Conduit	1x4"
Vancouver	Conduit in parkade (1 cable in conduit)	1022	200 Granville St Vancouver	200 Burrard St Vancouver	144	SM	2	Conduit	1x4"
Vancouver	Conduit in parkade (1 cable in conduit)	1023	200 Granville St Vancouver	200 Burrard St Vancouver	144	SM	2	Conduit	1x4"
Vancouver	Conduit Waterfront Rd (1 cable in conduit)	1020	200 Granville St Vancouver	200 Burrard St Vancouver	24	SM	6	Conduit	1x2"
Vancouver	Conduit Waterfront Rd (1 cable in conduit)	1021	200 Granville St Vancouver	200 Burrard St Vancouver	24	MM	4	Conduit	1x2"

CUSTOMER NAMES REDACTED

ANNEX 2 TO SCHEDULE A
CUSTOMERS FORMING PART OF REMAINING PURCHASED ASSETS

Account No	Cust Name
030057000	
030076000	
030228002	
030228003	
030477000	
030518000	
030793001	
030794000	
030794001	
030794002	
030794003	
030794004	
030853000	
030882000	
030930000	
030930001	
030965000	
030987000	
030998000	
031085002	
031391000	
031422000	
031456000	
031692000	
031756000	
031848000	
031873000	
031926000	
031906000	
030994004	
031934000	
030651000	
031515000	
030689010	
030392000	
031529001	
031529003	
030994011	
030946000	

CUSTOMER NAMES REDACTED

031548000
031683000
030147000
030799000
031566000
030180000
030905000
031282000
031035000
030127000
030911000
031023000
031152000
031398000
031602000
031784000
030805000
030671000
030773000
031762000
031200000
030468000
031448000
030956000
031494000
031214000
031316000
031437000
031801000
030867000
030901000
030994015
031026000
031062000
030488000
030488001
030488002
030488003
030488004
030488005
030488006
030488007
030488008

CUSTOMER NAMES REDACTED

030488009
030488010
030488011
030488012
030488013
030488014
030488015
030488016
030488017
030488018
030488019
030994014
030864000
031814000
031816000
031085000
031085001
031481000
030994007
031862000
031735000
030097000
031512000
030017000
031397000
031397001
031397002
031397003
031503000
031335001
030448000
030048000
030440000
031925000
031656000
030627000
031284000
031284001
030140000
031775000
031890001
031933000
030042000

CUSTOMER NAMES REDACTED

031778000
031870000
031871000
030855000
030855001
031661000
030120001
031727000
031375000
031064000
031066000
031011000
030051000
031713000
031901000
032000101
031574003
031413000
030173000
030258000
030275000
030804000
031834000
030641004
030213000
030816000
030816001
030425000
030425001
030740000
031891000
030052000
031800000
030818000
031890000
030442000
031954000
032102000
031407001
031407002
031407004
031407007
031407008

CUSTOMER NAMES REDACTED

031407011
031407014
031407015
031407020
031407021
031407022
031407023
031407025
031407029
031407030
031407032
031407033
031407034
031407036
031407037
031407040
031407041
031407042
031407045
031407048
031407049
031407051
031407054
031407056
031407059
031407067
031407069
031407073
031407080
031407081
031407083
031407087
031407088
031407089
031905000
031840000
030817000
031951000
031860000
030803003
030803000
031894002
030517000

CUSTOMER NAMES REDACTED

031462000
031761000
031950000
031745000
031745001
031944000
030583000
031941000
031695099
031695101
031952000
031952001
031877000
030238000
030866000
031392000
031761001
031888000
030463000
031782000
031882000
030917000
031900000
031831000
031572000
031572001
031911000
031614000
031832000
031830000
031705000
031173000
031173001
031803000
031864000
030461000
031198000
031198001
031198002
031526000
031942000
031157000
031157001

CUSTOMER NAMES REDACTED

031432000
031924000
031817000
031943000
030565001
031404000
031851000
031798001
031798002
031798003
031798004
031798005
031798006
031798007
031798008
031798010
031798011
031798012
031798014
031798015
031798016
031798017
031798018
031798019
031798021
031798022
031798023
030222000
031886000
031889000
032103000
032104000
031937000
030903000
031038000
031534000
031913000
035002093
030075000
031170000
030642000
030514000
031510000

CUSTOMER NAMES REDACTED

031510006
031510010
031510012
031510015
031510018
031510020
031510026
030575000
031569000
031922000
031568000
031568001
031568002
031828000
031148000
030812000
031825000
031747000
031908000
031703000
031632000
031939000
030838000
031844000
031844001
031760000
031936000
030652001
030652002
030652003
030652004
030652005
030652006
030449000
031046000
031907000
032106001
032106002
032106003
031598000
031598001
031598002
031717000

CUSTOMER NAMES REDACTED

031717001
031717002
031717003
031329000
031949000
030641000
030641001
030641002
030641003
030641010
031160000
031567000
031847000
031507000
031507001
031507003
031507005
031507006
031507008
031829000
031733000
031739000
031741000
031742000
031743000
031764000
031818000
035001891
035001892
031855000
031855001
031809000
031842000
031845000
031846001
032100000
032100001
032100002
032100003
032100004
032100005
032100006
032100007

032101000
032105000
031693001
031693011
031693014
031693018
031694002
031694004
031694012
031694020
031694024
031694028
031694032
031694044
031694056
031694060
031694064
031694068
031694072
031694077
031694080
031694084
031694088
031694092
031694100
031694104
031694109
031694112
031694128
031694132
031694136
031694140
031694145
031694149
031694168
031694174
031694178
031694180
031694201
031694205
031694209
031694213
031694217

031694221
031694223
031694229
031694233
031694237
031694241
031694245
031694250
031694253
031694261
031694272
031694275
031694279
031694281
031694285
031694288
031694294
031694303
031694306
031694310
031694316
031694325
031694327
031694333
031694337
031694344
031694346
031694350
031694354
031694360
031694364
031694371
031694373
031694377
031694386
031694398
031694402
031694406
031694409
031694413
031694417
031694421
031694425

CUSTOMER NAMES REDACTED

031694433
031694441
031694444
031694447
031694451
031694455
031694463
031694467
031694471
031694475
031694479
031694483
031694491
031694495
031694499
031694503
031694511
031694515
031694519
031694523
031694527
031694531
031694535
031694539
031694547
031694551
031694555
031694559
031694563
031694567
031694571
031694575
031694579
031694585
031694588
031694595
031694600
031694603
031694607
031694618
031694623
031694636
031694651

031694655
031694663
031694667
031694671
031694672
031694675
031694683
031694685
031694692
031694695
031694699
031694704
031694708
031694715
031694719
031694727
031694735
031694739
031694743
031694747
031694751
031694755
031694759
031694763
031694771
031694779
031694787
031694791
031694795
031694803
031694819
031694823
031694831
031694835
031694839
031694843
031694847
031694851
031694857
031694861
031694862
031694880
031694881

CUSTOMER NAMES REDACTED

031694883
031694885
031694886
031694887
031694889
031694890
031694892
031694893
031694894
031694895
031694897
031694902
031694903
031694906
031694909
031694911
031695000
031695011
031695015
031695017
031695021
031695028
031695030
031695032
031695034
031695046
031695052
031695054
031695060
031695062
031695066
031695068
031695070
031695075
031695078
031695082
031695086
031695094
031695102
031695106
031695112
031695114
031695118

031695122
031695123
031695130
031695132
031695139
031695154
031695158
031695160
031696028
031696030
031696039
031696041
031696045
031696050
031696054
031696061
031696065
031696071
031696076
031696078
031696080
030126000
030144000
030175000
030190000
030252000
030289000
030470000
030533000
030675000
030689003
030788000
030870000
030912000
030946001
030992000
031009000
031023001
031136000
031185000
031196000
031357000
031429000

CUSTOMER NAMES REDACTED

031435000
031506003
031506009
031511000
031519000
031590000
031594000
031599000
031684021
031684048
031684050
031684064
031687000
031737000
031820000
031867000
031868000
031875000
031892000
031898000
031903000
031928000
031945000
051000132
051000138
051000166
051000172
051000174
051000189
051000200
051000234
051000238
051000240
051000269
051000272
051000274
051000303
051000318
051000326
051000335
051000357
051000381
051000386

051000403
051000409
051000421
051000447
051000459
051000524
051000527
051000532
051001004
051000496
051000331
051000520
051000119
051000137
051000302
051000104
051000106
051000175
051000298
051000349
051000431
051000490
051000237
051000441
051000293
051000465
051000117
051000453
051000320
051000456
051000116
051000224
051000165
051000461
051000273
051000127
051000120
051000361
051000411
051000114
051000484
051000215
051000233

051000147
051000536
051000244
051000243
051000429
051000141
051000204
051000294
051000363
051000430
051000457
051000124
051000383
051000341
051000110
051000212
051000523
051000279
051000136
051000330
051000125
051000323
051000352
051000505
051000314
051000432
051000122
051000290
051000160
051000242
051000347
051000389
051000415
051000245
051000218
051000121
051000311
051000158
051000142
051000410
051000255
051000510
051000191

051000339
051000221
051000473
051000213
051000423
051000216
051000476
051000169
051000422
051000354
051000446
051000315
051000413
051000217
051000111
051000480
051000305
051000479
051000219
051000248
051000163
051000455
051000159
051000483
051000332
051000359
051000388
051000277
051000184
051000177
051000503
051000192
051000103
051000101
051000220
051000182
051000259
051000454
051000146
051000437
051000333
051000344
051000343

CUSTOMER NAMES REDACTED

051000345
051000206
051000197
051000362
051000267
051000112
051000113
051000448
051000187
051000535
051000209
051000531
051000417
051000162
051000475
051000364
051000324
051000186
051000369
051000440
051000528
051000275
051000425
051000256
051000420
051000164
051000304
051000436
051000222
051000501
051000257
051000149
051000241
051001001
051000292
051000297
051000284
051000276
051000492
051000396
051000144
051000310
051000231

051000211
051000309
051000260
051000250
051000252
051000481
051000193
051000268
051000102
051000105
051000108
051000115
051000145
051000150
051000170
051000179
051000195
051000196
051000214
051000246
051000254
051000258
051000281
051000283
051000288
051000295
051000307
051000313
051000317
051000321
051000334
051000351
051000358
051000366
051000374
051000378
051000418
051000434
051000444
051000445
051000468
051000471
051000488

CUSTOMER NAMES REDACTED

051000513
051000518
051000530
051000379
051000190
051000427
055005602
055106501
055111601
055114251
055114701
055114901
055115601
055119601
055137301
055140301
055141401
055142701
055144501
055145901
055146701
055147801
055150001
055155301
055155501
055156601
055161301
055164701
055164901
055173601
055178301
055179401
055185801
055188701
055193801
055199100
055199801
055202601
055203801
055205501
055206600
055206601
055213101

055216701
055217701
055224001
055227201
055228001
055230700
055231600
055234601
055235501
055237800
055241600
055241601
055241700
055241701
055243501
055246401
055246501
055254701
055255100
055260701
055262601
055268201
055270201
055270901
055271101
055271300
055271301
055272900
055272901
055274801
055275401
055278001
055278100
055278101
055278900
055278901
055282101
055282701
055283101
055289100
055289101
055290401
055292001

055297711
055303201
055304101
055306601
055307001
055308601
055309500
055309501
055313301
055313601
055314201
055314301
055317201
055317601
055318201
055318401
055318700
055327901
055328300
055328601
055330201
055332901
055333700
055335201
055335601
055338101
055346201
055346202
055346401
055346500
055346501
055347001
055347400
055348901
055349401
055349701
055351500
055351601
055354301
055363300
055366301
055371801

055372001
055372201
055374201
055375901
055378700
055378701
055380501
055380701
055381001
055381201
055382101
055382301
055546001
055727101
055810500
055810501
055870000
055283600
055283601
055281100
055281101
055116581
055270501
055296401
055351001
055375001
055381101
055381601
055840001
055216100
055293200
055308400
055370600
055367200
055367201
055130800
055130801
055325800
055199901
055266001
055349801
055311500
055311501

CUSTOMER NAMES REDACTED

055336300
055326901
055270900
055347300
055325400
055325401
055340700
055215800
055215801
055130000
055171400
055171401
055285700
055274200
055291600
055327201
055115100
055115101
055287700
055350100
055115400
055323900
055287401
055346800
055246700
055265801
055329100
055279000
055279001
055353700
055353701
055159001
055328200
055283000
055283001
055310300
055304401
055283400
055250100
055200900
055319000
055354100
055354101

055331001
055331000
055111200
055111201
055149201
055338601
055259600
055259601
055324500
055170600
055170601
055292600
055114500
055374901
055331400
055224300
055224301
055341900
055336800
055336801
055330000
055330001
055256500
055339500
055285200
055285201
055253300
055253301
055115411
055752000
055752001
055127200
055127201
055180210
055180211
055180212
055230400
055217900
055880000
055880001
055123700
055123701
055346600

055346601
055382201
055144900
055144901
055333401
055308600
055155801
055350401
055319600
055153700
055181900
055181901
055340500
055279400
055346900
055233100
055233101
055265600
055265601
055207101
055146100
055287101
055194801
055123500
055371400
055371401
055380401
055379201
055337803
055337700
055337801
055337802
055337804
055337805
055337806
055337807
055337808
055337809
055337810
055337811
055337812
055337813
055337814

055337815
055337816
055337817
055337818
055337824
055337825
055337826
055379501
05514690I
05535090I
055266500
05535580I
05510200I
055103300
055103301
055103401
055105001
055107901
055115901
055116641
055116781
055119001
055127301
055128800
055128801
055133001
05513940I
055162401
05516990I
055172701
05517430I
055180200
05518700I
05518890I
055195501
055198501
05520460I
055211501
055213901
055220801
055222401
05522300I
055224901

055230201
055236601
055237802
055253801
055254301
055256011
055256501
055258001
055266400
055266401
055266501
055273301
055273401
055275300
055278201
055282601
055282801
055283401
055283901
055288401
055292801
055303001
055306301
055307601
055308001
055309401
055309901
055310901
055311801
055311901
055312201
055313101
055314701
055316301
055317501
055319501
055322601
055323200
055323201
055324501
055326201
055328001
055329801

055330901
055331701
055332001
055332301
055332401
055332701
055333161
055333301
055336201
055336901
055337401
055338401
055339901
055342500
055346301
055350500
055350501
055351201
055351401
055351701
055352001
055353101
055353501
055355001
055358901
055359701
055360601
055362500
055365401
055368901
055369901
055372100
055379401
055380801
055380901
055381501
055381901
055382001
055382701
055382801
055407001
055431001
055560001

055583001
055826801
055974501
055351901
055156600
055199101
055230801
055797701
055382401
055312601
055743801
055112701
055237801
055382501
055113581
055268701
055295100
055306201
055378801
055264901
055000398
055983901
055104661
041012940
041019296
041020085
041021480
041022009
041022229
041022490
041034768
041050001
041610032
042000688
042000713
042000889
042000891
042000895
042000913
042000914
042191385
041019293
042191683

041013857
041012944
041014010
042191401
041016762
041022277
042000935
041013612
041012997
041015371
041019305
041020764
041021797
041021931
041022168
041023331
041026222
041026474
041013891
041034290
041014462
041032823
041033899
041048600
041021118
041019303
041014407
041033958
041055505
041015435
041021651
041027002
041018207
041012715
041014457
041016438
041031873
041012689
041020086
041017277
041013693
041013779
041013986

041014431
041015177
041019308
042000898
041021940
042000842
042191354
041021542
041032946
041019520
042000824
041023470
041019768
041048601
042000929
042000910
042000327
041019310
042000925
042000902
042000866
042000726
042000727
042000855
042000890
042000905
042000882
042000885
042000899
042300404
042000922
041017275
042000456
042000912
042000901
042000738
042000689
042000900
042000832
042000825
042000826
042000845
041013104

CUSTOMER NAMES REDACTED

041014988
041015952
041019424
041019501
041021769
041026165
041028161
041028167
041028845
041031486
041034053
041034418
041034950
041048598
041310486
042000634
042000795
042000806
042000847
042000896
042000906
042000923
042000934
042361561
061000119
061000120
061000121
061000130
061000138
061000103
061000101
061000134
061000127
061000137
061000133
061000106
061000128
061000110
061000126
061000135
061000114
061000115
061000117

061000118
000191553
000191577
000191605
000191609
000191652
000191662
000191678
000191681
000191676
000191685
000191633
000191667
000191688
000191689
000191647
000191623
000191660
000191692
000191697
000191604
000191703
000191661
000191717
000191566
000191624
000191657
000191628
000191581
000191643
000191723
000191603
000191572
000191556
000191622
000191610
000191573
000191673
000191653
000191655
000191642
000191608
000191582

000191702
000191693
000191625
000191712
000191654
000191554
000191709
000191574
000191656
000191598
000191612
000191670
000191551
000191641
000191631
000191636
000191671
000191632
000191542
000191557
000191571
000191552
000191561
000191576
000191578
000191579
000191597
000191611
000191626
000191639
000191646
000191649
000191677
000191679
000191686
000191687
000191694
000191700
000191701
000191713
000191714
000191718
000191614

CUSTOMER NAMES REDACTED

000191615
000191616
000191644
000191560
000191562
000191564
000191565
000191570
000191600
000191544
000191599
000191587
000191648
000191555
000191547
000191548
000191558
000191602
000191606
000191607
000191640
000191665
000191668
000191724
000191725
000191726
000191730
000191731
000191732
000191733
000191734
000191735
000191736
000191738
000191739
000191740
000191741
000191742
000191743
000191744
000191747
000191748
000191749

000191751
000191752
000191753
000191754
000191755
000191756
000191758
000191759
000191764
000191766
000191767
000191768
000191769
000191770
000191772
000191773
000191774
000191775
000191724
000191725
000191726
000191730
000191731
000191732
000191733
000191734
000191735
000191736
000191738
000191739
000191740
000191741
000191742
000191743
000191744
000191747
000191748
000191749
000191751
000191752
000191753

SCHEDULE B
SPECIFIC EXCLUSIONS TO REMAINING PURCHASED ASSETS

1. The following Facilities::

   (a) 3060 Cobble Hill Road, Mill Bay, British Columbia

   (b) Calgary. 530 – 8th Avenue SW, Suite #918 (aka 900), Calgary, Alberta; and 530 – 8th Avenue SW, Suite #915, Calgary, Alberta

   (c) HarbourCentre, 555 West Hastings Street, #1508, Vancouver, British Columbia

   (d) 1375 Trans Canada Hwy, Montreal, Quebec

2. Any Contracts or obligations owed to Customers who have terminated services with the Companies.

3. All of the Optional Purchased Assets related to the operation of the Coastline Broadcasting business of the Companies, unless, in the opinion of the Purcahser such Optional Purchased Assets are required to use or operate the Purchased Assets.

APPENDIX J

LAWSON LUNDELL LLP

Suite 1100, 225 - 6th Avenue S.W.
Brookfield Place
Calgary, Alberta
Canada T2P1N2
T: 403.269.6900

July 30, 2021

Alexis Teasdale
D: 403.218.7564
F: 403.269.9494
ateasdale@lawsonlundell.com

VIA EMAIL: Mike.Bell@parthenon.ey.com

Ernst & Young Inc.
Suite 1600
700 Georgia Street West
Vancouver, BC V7Y 1A2

Attention: Mike Bell

Dear Mr. Bell:

Re: Second Option Notice dated January 12, 2018 (the "Second Option Notice") Issued Pursuant to the Amended and Restated Asset Purchase Agreement between Ernst & Young Inc. in its capacity as Court-appointed Monitor of 8640025 Canada Inc., Teliphone Data Centres Inc., Teliphone Canada Corp. and TNW Networks Corp. as the Vendor (the "Monitor" or the "Vendor") and 10276375 Canada Inc. as the Purchaser (the "Purchaser") dated as of September 20, 2017 (the "APA")

As you know, Lawson Lundell LLP is counsel to the Purchaser under the APA, now named Navigata Communications Ltd. ("**NCL**"). All capitalized terms not otherwise defined herein have the meaning given to them in the APA or the Second Option Notice, as applicable.

We write with respect to the Second Option Notice, which was issued by NCL approximately three and a half years ago. It is NCL's position that the Second Option Notice, and the transaction contemplated thereunder, is frustrated due to the delays arising from the numerous appeals and applications undertaken by TNW Networks Corp. and others[1] (collectively, the "**Claiming Parties**"), which has resulted in inordinate delay in the Vendor's motion to the Court for approval of the sale, assignment, transfer and conveyance to NCL of the Remaining Purchased Assets.

At the time of contracting, NCL could not have foreseen the risk that the Vendor would be delayed for more than two years in obtaining approval of, and closing, the transaction contemplated by the Second Option Notice, which expressly requires the Vendor to seek Court approval of the transaction "as soon as reasonably possible."

[1] Cloud-Phone Inc., ChoiceTel Networks Ltd., Titan Communications Ltd., 8583498 Canada Ltd., 9151-4877 Quebec Inc. dba Dialek Telecom, Orion Communications Inc., New York Telecommunication Exchange Inc., United American Corp. (US Florida), and Coastline Broadcasting Ltd.

In NCL's view, the inordinate delay in the Monitor seeking approval of, and closing, the transaction contemplated by the Second Option Notice has frustrated the Second Option Notice, thus excusing the Vendor and the Purchaser from further performance under the APA pursuant to the Second Option Notice.

Notwithstanding that it is not bound to complete the purchase of any of the Remaining Purchased Assets under the APA and the Second Option Notice, NCL is prepared to complete the sale of certain Remaining Purchased Assets, subject to both of the following conditions being met:

1. The Purchaser agrees to pay $503,000.00 (the "**Amended Purchase Price**") for all Remaining Purchased Assets set out in the Amended and Restated Second Option Notice, subject to both of the following conditions being met:

    (a) that the Monitor shall file its application for court approval of the sale of the Optional Purchased Assets pursuant to the Amended and Restated Second Option Notice as soon as reasonably possible and in any event no later than Friday, August 6, 2021;

    (b) the Vendor agrees to reduce the Amended Purchase Price by the amount of $117,994 (the **"Service Payment**"), representing the value of the services provided by NCL to the Claiming Parties in respect of assets that NCL opted not to acquire, and which were released to the Claiming Parties, in consideration of which the Purchaser will assign to the Vendor all of its rights and claims with respect to the Service Payment;

2. The Vendor agrees to request from the Court, and the Court shall have granted, a form of Second Subsequent Approval and Vesting Order containing:

    (a) a full and final release of the Purchaser from and against any and all claims by the Claiming Parties, or any claims made by the Claiming Parties against or in respect of the Required Purchased Assets and any Remaining Purchased Assets purchased by NCL pursuant to the APA, the Approval and Vesting Order granted on September 15, 2017, the Option Notice, the Subsequent Approval and Vesting Order, the Amended and Restated Second Option Notice, and the Second Subsequent Approval and Vesting Order; and

    (b) a term prohibiting the Claiming Parties from taking any actions, without prior leave of the Court, against NCL or against or in respect of the Required Purchased Assets and any Remaining Purchased Assets purchased by NCL pursuant to the APA, the Approval and Vesting Order granted on September 15, 2017, the Option Notice, the Subsequent Approval and Vesting Order, the Amended and Restated Second Option Notice, and the Second Subsequent Approval and Vesting Order.

Finally, NCL is aware that TELUS and the BCE Group, the beneficiaries of the Network Providers' Charge (as defined in the Order of Justice MacIntosh pronounced July 18, 2017), have agreed to reduce the amounts secured by that charge from $890,000 to $325,000, which will clearly benefit the remaining creditors. However, NCL understands that the concession agreed to by TELUS and BCE Group is contingent on completion of the sale to NCL described in this letter.

We look forward to the Vendor's confirmation of agreement with the foregoing terms, following which we will provide a form of Amended and Restated Second Option Notice for review and execution by the Vendor.

Yours very truly,

LAWSON LUNDELL LLP

Alexis Teasdale*

AET

cc. William L. Roberts – Lawson Lundell LLP (*via email*)
John Shewfelt – Miller Thomson LLP (*via email*)
Client (*via email*)

*Professional Corporation

APPENDIX K

AMENDED AND RESTATED SECOND OPTION NOTICE

TO:	ERNST & YOUNG INC., in its capacity as Court-appointed Monitor of 8640025 Canada Inc., Teliphone Data Centres Inc., and Teliphone Canada Corp., and by Court Order on behalf of TNW Networks Corp. (the "**Vendor**")
RE:	Amended and Restated Asset Purchase Agreement made between the Vendor and Navigata Communications Limited (formerly 1027637 Canada Inc.) (the "**Purchaser**") dated September 20, 2017, as amended by Addendum No. 1 to the Amended and Restated Asset Purchase Agreement dated December 18, 2017 and Addendum No. 2 to Amended and Restated Asset Purchase Agreement dated January 10, 2018 (the "**APA**")
DATE:	August 9, 2021

WHEREAS:

A. All capitalized terms used herein but not defined shall have the meanings given to such terms in the APA;

B. The Vendor and the Purchaser entered into the APA to facilitate the purchase of the assets, properties and undertakings of the Companies in accordance with the terms and conditions of the APA;

C. The APA granted the Purchaser the Option to acquire all or certain of the Optional Purchased Assets, subject to the terms and conditions thereof;

D. In order to exercise the Option, the Purchaser was required to send the Option Notice dated November 27, 2017 (the "**Option Notice**") to the Monitor;

E. The Option Notice permitted the delivery of a Second Option Notice (as defined in the Option Notice) to further exercise the Option;

F. The Second Option Notice was delivered by the Purchaser to the Vendor on January 12, 2018 in accordance with the APA; and

G. The Vendor and the Purchaser have agreed to amend and restate the Second Option Notice pursuant to the terms and conditions of this Amended and Restated Second Option Notice (this "**Restated Second Option Notice**").

NOW THEREFORE, for good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Purchaser hereby notifies the Vendor as follows:

1. The Purchaser hereby notifies the Vendor that it wishes to acquire, for an amended purchase price of $503,000.00 (the "**Amended Purchase Price**") and subject to the conditions in Sections 2, 3, and 4 of this Restated Second Option Notice being met, all of

the remaining Optional Purchased Assets which have not previously been acquired by the Purchaser:

(a) including, without limitation, the Optional Purchased Assets listed on **Schedule A** hereto; **but**

(b) excluding the Excluded Assets and the Optional Purchased Assets listed on **Schedule B** hereto,

(collectively, the "**Remaining Purchased Assets**").

2. The Vendor has agreed that it will, as soon as reasonably possible and in any event no later than August 13, 2021, file an application for court approval of the sale, assignment, transfer and conveyance to the Purchaser of the Remaining Purchased Assets pursuant to the Second Subsequent Approval and Vesting Order, which shall also contain the terms set out in Section 4 of this Restated Second Option Notice.

3. The Vendor hereby agrees to reduce the Amended Purchase Price by the amount of $117,994 (the "**Service Payment**"), representing the value of the services provided by Purchaser to TNW Networks Corp., Cloud-Phone Inc., ChoiceTel Networks Ltd., Titan Communications Ltd., 8583498 Canada Ltd., 9151-4877 Quebec Inc. dba Dialek Telecom, Orion Communications Inc., New York Telecommunication Exchange Inc., United American Corp. (US Florida), and Coastline Broadcasting Ltd. (collectively, the "**Claiming Parties**") in respect of assets that Purchaser opted not to acquire, and which were released to the Claiming Parties, in consideration of which the Purchaser hereby agrees to assign to the Vendor all of its rights and claims with respect to the Service Payment.

4. The Vendor hereby agrees to request from the Supreme Court of British Columbia (the "**Court**"), and the Court shall have granted the Second Subsequent Approval and Vesting Order, and further agrees that the Second Subsequent Approval and Vesting Order shall also include the following provisions:

(a) a full and final release of the Purchaser from and against any and all claims by the Claiming Parties, or any claims made by the Claiming Parties against or in respect of the Required Purchased Assets or the Optional Purchased Assets (including the Schedule A Assets (as defined in the Option Notice) and the Remaining Assets) purchased by NCL pursuant to the APA, the Approval and Vesting Order granted on September 15, 2017, the Option Notice, the Subsequent Approval and Vesting Order, the Amended and Restated Second Option Notice, and the Second Subsequent Approval and Vesting Order; and

(b) a term prohibiting the Claiming Parties from taking any actions, without prior leave of the Court, against NCL or against or in respect of the Required Purchased Assets or the Optional Purchased Assets (including the Schedule A Assets (as defined in the Option Notice) and the Remaining Assets) purchased by NCL pursuant to the APA, the Approval and Vesting Order granted on September 15, 2017, the Option

Notice, the Subsequent Approval and Vesting Order, the Amended and Restated Second Option Notice, and the Second Subsequent Approval and Vesting Order.

5. Prior to the granting of the Second Subsequent Approval and Vesting Order in respect of the Remaining Assets, the Purchaser hereby retains the right to decline to acquire any of the Remaining Purchased Assets, and provide a revised Schedule B hereto and designate any of the Remaining Purchased Assets as Excluded Assets under the APA, such that they will not be acquired by the Purchaser.

6. Notwithstanding the terms and conditions of the APA:

   (a) the Purchaser shall have the right, exercisable at the sole option of the Purchaser, both before and after the acquisition of any of the Optional Purchased Assets pursuant to the terms and conditions of the APA, the Option Notice, the Subsequent Approval and Vesting Order, this Restated Second Option Notice and/or the Second Subsequent Approval and Vesting Order, to decline to acquire or return to the Vendor and the Companies any of such Optional Purchased Assets (including the Schedule A Assets (as defined in the Option Notice) and the Remaining Assets) if, in the opinion of the Purchaser, such Optional Purchased Assets are not desired by the Purchaser, provided that the Purchaser's right described in this Section 6(a) shall terminate, with respect to any Optional Purchased Asset, on the date that is 90 days after the later of: (a) expiration of the appeal period for the Second Subsequent Approval and Vesting Order under which the Purchaser obtained title to that Optional Purchased Asset; and (b) the disposition of any appeal of the Second Subsequent Approval and Vesting Order under which the Purchaser obtained title to that Optional Purchased Asset;

   (b) if the Purchaser exercises such option to decline to acquire or return to the Vendor any of such Optional Purchased Assets, such Optional Purchased Assets will be deemed to have never been transferred to the Purchaser and remain the property of the Vendor and the Companies; and

   (c) such Optional Purchased Assets shall, for the purposes of the Purchase Price Adjustment, the Floor Price and all other calculations in respect of the Purchase Price, be deemed to have not been acquired.

7. Nothing herein shall affect the sale and assignment of the Required Purchased Assets and the Schedule A Assets (as defined in the Option Notice) that were sold and assigned in accordance with the Approval and Vesting Order and the Subsequent Approval and Vesting Order, and, if **Schedule A** hereto includes any of such assets it shall be deemed to be amended to remove such Required Purchased Asset(s) and such Schedule A Assets (as defined in the Option Notice).

8. If any of the Remaining Purchased Assets listed on **Schedule A** hereto no longer exist, **Schedule A** hereto shall be deemed to be amended to remove such assets.

9. The effectiveness hereof is conditional upon the receipt, by the Vendor and the Purchaser, of a fully executed copy of this Restated Second Option Notice.

10. This Restated Second Option Notice may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be considered one and the same agreement. A signed facsimile, telecopied or electronic copy (including Portable Document Format) of this Restated Second Option Notice shall be effectual and valid proof of execution and delivery.

11. This Restated Second Option Notice shall be governed by, and construed in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable therein, and the Parties agree to, and do hereby, attorn to the exclusive jurisdiction of the British Columbia Supreme Court in relation to any matter relating to this Restated Second Option Notice.

12. This Restated Second Option Notice shall amend, restate and replace the Second Option Notice. The Vendor acknowledges and agrees that, notwisthanding the terms and conditions of the APA, this Restated Second Option Notice shall be accepted by the Vendor and, to the extent required, the due date for delivery of this Option Notice required pursuant to the APA shall be extended to the date of this Restated Second Option Notice.

[Signature Page Follows]

DATED as of the date first written above.

NAVIGATA COMMUNICATIONS LIMITED

By: _____
Name: G. Vanderpost
Title: CFO

The Vendor hereby acknowledges and agrees to the terms and conditions of this Restated Second Option Notice.

ERNST & YOUNG INC., solely in its capacity as Court-appointed Monitor of 8640025 Canada Inc., Teliphone Data Centres Inc. and Teliphone Canada Corp.

By: _____
Name:
Title:

ERNST & YOUNG INC., , on behalf of TNW Networks Corp., and not in its personal or corporate capacity

By: _____
Name:
Title:

SCHEDULE A
SPECIFIC INCLUSIONS TO REMAINING PURCHASED ASSETS

1. All Consents, Contracts, Leases, Information Systems and Books and Records or other data or information related to or stored on any of the Purchased Assets which are deemed necessary or desirable by the Purchaser in order to use or operate the Purchased Assets and which have not already been acquired.

2. All of the remaining IP address resources of the Companies, including, without limitation, the following:

   (a) IPv6 Space:

      (i) 2607:7200::/32 (AS5071)

3. All of the Companies' remaining autonomous system (AS) numbers including AS15152 which includes, without limitation, the following IP address ranges:

   (a) 199.192.176.0/22

   (b) 192.34.36.0/22

   (c) 2605:D500::/32

4. All of the Companies' remaining domain names, including, without limitation, the following:

   (a) canadaonenet.com

   (b) canadaonenet.com

   (c) choicetelnetworks.ca

   (d) choicetelnetworks.com

   (e) cloud-phone.ca

   (f) dns-dr.net

   (g) galaxytelecom.net

   (h) galnet.ca

   (i) orioncommunications.com

   (j) orioncommunications.com

   (k) rocketnetworks.ca

(l) rocketnetworks.com

(m) teliphone.biz

(n) teliphone.ca

(o) teliphone.ca

(p) teliphone.co

(q) teliphone.com

(r) teliphone.eu

(s) teliphone.eu

(t) teliphone.in

(u) teliphone.info

(v) teliphone.me

(w) teliphone.mobi

(x) teliphone.mobi

(y) teliphone.tv

(z) teliphone.us

(aa) teliphone.us

(bb) teliphonecorp.com

(cc) teliphoneinc.com

(dd) titantelco.com

(ee) titantelco.net

(ff) tnwcanada.com

(gg) tnwcorp.com

(hh) tnwfax.com

(ii) tnwnetwork.com

(jj) tnwnetworks.com

(kk) tnwusa.com

(ll) westel.com

5. All of the Companies' remaining trademarks, including, without limitation, the following:

Owner	Description	Application #	Trademark #
Registrant: Navigata Communications Inc.	NAVIGATA DESIGN	1132729	TMA636756

6. All of the Companies' remaining business and trade names, including, without limitation, the following:

(a) ChoiceTel Networks Ltd.

(b) TNW Networks Corp.

(c) TNW

(d) Teliphone Navigata-Westel Communication Inc.

(e) Teliphone

(f) Titan Communications Inc.

(g) Cloud Phone Inc.

(h) Rocket Networks

(i) ChoiceTel

(j) TNW Networks

(k) Teliphone Navigata-Westel

(l) Titan

(m) Cloud Phone

7. The following remaining Facilities:

(a) LAT55-24-40, LG 122-39-04, Mackenzie BC

(b) Vanderhoof CBC Parcel A, South West, Quarter of Section 4.

(c) LAT 55-01, LG 123-06, Prince George, BC (Butternut Hill Passive)

(d) M659.30 Chetwynd Communications Building, Chetwynd BC (CN Facility)

(e) 102 11th Ave S Room 114, Cranbrook BC

(f) LAT 55-25-21, LG 122-37-51 MacKenzie Pine Le Moray Park, BC

(g) LAT 55-43-11, LG 122-64-39 Mackenzie Pine Le Moray Park, BC

(h) LAT 50-39, LG 121-57, Lillooet BC

(i) 1300 Main Street, Lillooet BC

(j) LAT 55-25-50, LG 123-01-57, Morfee Mountain, BC

(k) UNSRVED Land, RG 5, Coast District, Murray Ridge, BC

(l) 555 West Hastings - 200 Granville - BC site 9092 MAA

(m) 320 - Unit #4 - Jessop Ave Saskatoon SK

8. Any and all spectrum Permits and Licenses

9. Any and all Permits and Licenses relating to any support structure agreements

10. Any and all Permits and Licenses relating to any municipal access agreements

11. Any and all easements, rights of way, surface rights, Permits and Licenses or otherwise granted in favour of the Companies

12. Any and all Permits and Licenses that are required and necessary to operate the Business

13. Any and all Microwave licenses identified in Schedule 3, section 6, of the September 20th, 2017 APA to the extent that they have not already been transferred under the Innovation Science and Economic Development Canada's Policy Guidelines Concerning the Transfer of Radio Licenses.

14. The Equipment and Assets Listed on Annex 1 to this Schedule A.

15. All equipment, whether or not specifically listed in the Schedules to the Option Notice or the Restated Second Option Notice, that is located in or used at the Facilities assigned to or acquired by the Purchaser, unless such equipment has been specifically listed as Excluded Assets, or the Monitor and Purchaser mutually agree in writing that such equipment shall be considered Excluded Assets.

16. Any and all of the Contracts (as amended, restated, supplemented or replaced) with the customers listed on Annex 2 to this Schedule A.

17. All assets listed under the heading “ChoiceTel Networks Ltd. (Canadian Saskachewan)” in Schedule F to the APA.

18. All assets listed under the heading “Cloud-Phone Inc. (Canadian Alberta)” in Schedule F to the APA.

19. All assets listed under the heading “Titan Communications Inc. (Canadian British Columbia)” in Schedule F to the APA.

20. All assets listed under the heading “8583498 Canada Ltd. (Canadian Federal)” in Schedule F to the APA.

21. All assets listed under the heading “Orion Communications Inc. (Canadian Ontario)” in Schedule F to the APA.

ANNEX 1 TO SCHEDULE A
EQUIPMENT AND ASSETS FORMING PART OF REMAINING PURCHASED ASSETS

(See Attached)

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size	Installation Date	Fibre Type	Cable Cost Description	Route Information	Total length of run
100Mile	Crown land right of way	1029	5th & Birch St 100 Mile House	Lone Butte Site lat 51 deg 33' 13" N long 121 deg 11' 13" W	6	SM	4	Direct buried armoured cable	n/a	1988	G652	($430 x 15.7 km x 1) + ($9460 x 16x1) = $158,111		15.7 km
Kelowna	In leased duct space	1003	Landmark business park 1632 Dickson Ave building 1	Landmark business park 1632 Dickson Ave building 2	12	SM	0	duct	n/a	2011	G653		Not in current use	300m
Kelowna	In leased duct space	1002	Landmark business park 1632 Dickson Ave building 2	Landmark business park 1632 Dickson Ave building 3	24	SM	2	duct	n/a	2011	G653			300m
Kelowna	In leased duct space	1001	Landmark business park 1632 Dickson Ave building 3	Landmark business park 1615 Dickson Ave	12	SM	2	duct	n/a	2011	G653			350m
Nanaimo	Combination of Telus duct, Telus support structure and Port of Nanaimo duct	1006	17 Church St Nanaimo	100 Port St Nanaimo	24	SM	2	In Telus duct for 835m, then on Telus aerial support structure for 1266, then into Port of Naniamo duct for 370m	1x4"	2012	G653			2.471km

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size	Installation Date	Fibre Type	Cable Cost Description	Route Information	Total length of run
Prince George	On Telus infrastructure	1014	Plaza 400 1044 5th Ave Pr George V2L 5G4	Gunn Road Pr George	36	SM	12	Aerial	n/a	1998	G653	($870 x 4.3 x 1.45) + ($6080 x 4.3 x 1) = $31,568	Telus support structure used for most of the install. However, the fibre is in conduit for the Yellowhead Bridge crossing (3' conduit for 600m) as well as the final approx 150m (2" conduit) for entrance into Plaza 400. There is also a 12 strand spliced into the cable at 2nd Ave and Ontario St. See next cable description	4.3 km
Prince George	On Telus / Hydro infrastructure	1015	AllStream CO 1300 1st Ave Pr George	Gunn Road Pr George via splice point at 2nd Ave & Ontario St Pr George	12	SM	2	Aerial / Telus duct	2" entrance	1998	G653	($430 x 1 x 1.45) + ($6080 x 1 x 1) = $6703.50	Spur off of main 36 strand cable to Plaza 400, spliced at 2nd and Ontario. Last 40m is in Telus conduit. 3 contacts in this section are Hydro only poles.	1 km
Salt Spring	On Telus infrastructure	1019	120 Rainbow Dr Saltspring Island	112 Rainbow Dr Saltspring Island	6	SM	2	Aerial	n/a	2009	G653	($430 x .3 x 1.45) + ($6080 x .3 x 2.3) = $4382.25	Telus support structure was used for install	300m
Terrace	On Telus aerial support structure	1007	4634 Park Ave Terrace	Splice point Walsh and Sparks St	48	SM	6	Aerial	n/a	2009	G653		Entrance to Park Ave medical centre is done through Telus duct	350m
Terrace	On Telus aerial support structure	1008	Splice point Walsh and Sparks St	3411 Munro St	6	SM	2	Aerial	n/a	2009	G653		Splice point at Walsh and Sparks St	893m
Terrace	On Telus aerial support structure	1009	Splice point Walsh and Sparks St	3605 Munro St	6	SM	2	Aerial	n/a	2009	G653		Splice point at Walsh and Sparks St	1326km
Terrace	On Telus aerial support structure	1010	Splice point Walsh and Sparks St	3430 Sparks St	6	SM	2	Aerial	n/a	2009	G653		Splice point at Walsh and Sparks St	263m

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size	Installation Date	Fibre Type	Cable Cost Description	Route Information	Total length of run
Terrace	On Telus aerial support structure	1011	Splice point Walsh and Sparks St	4620 Loen Ave	6	SM	2	Aerial	n/a	2009	G653		Splice point at Walsh and Sparks St	205m
Vancouver	Conduit Seymour St (3 cables in conduit)	1024	200 Granville St Vancouver	515 W Hastings St Vancouver	24	SM	24	Conduit	1x4" (three 1 1/4" inner ducts)	1998	G653	($650 x .430 x 1.45) + ($940 x .430 x 7.70) = $3517.61	34m of conduit is in city street. All other conduit is on private property	200m between locations, 230m interior, 430m total
Vancouver		1025	200 Granville St Vancouver	515 W Hastings St Vancouver	24	MM	16	Conduit		1998	G653	($650 x .430 x 1.45) + ($940 x .430 x 7.70) = $3517.61	18m of conduit is in city street. All other conduit is on private property.	200m between locations, 230m interior, 430m total
Vancouver		1026	200 Granville St Vancouver	555 W Hastings St Vancouver	48	SM	34	Conduit		2000	G653	($870 x .430 x 1.45) + ($940 x .430 x 7.70) = $3654.78	18m of conduit is in city street. All other conduit is on private property.	200m between locations, 230m interior, 430m total
Vancouver	Conduit Cordova St (1 cable in conduit)	1027	200 Granville St Vancouver	555 W Hastings St Vancouver	144	SM	2	Conduit	1x4"	2007	G653	($2620 x .430 x 1.45) + ($940 x .430 x 7.70) = $4745.91	18m of conduit is in city street. All other conduit is on private property.	200m between locations, 230m interior, 430m total
Vancouver	Conduit Cordova St (1 cable in conduit)	1028	200 Granville St Vancouver	515 W Hastings St Vancouver	144	SM	67	Conduit	1x4"	2007	G653	($2620 x .430 x 1.45) + ($940 x .430 x 7.70) = $4745.91	18m of conduit is in city street. All other conduit is on private property.	200m between locations, 230m interior, 430m total

Where	Cable Install Information	Fibre #	Location A	Location B	Cable size	Cable Type	Strands in Use	Installation Method	Conduit size	Installation Date	Fibre Type	Cable Cost Description	Route Information	Total length of run
Vancouver	Conduit in parkade (1 cable in conduit)	1022	200 Granville St Vancouver	200 Burrard St Vancouver	144	SM	2	Conduit	1x4"	2007	G653	($2620 x .3 x 1.45) + ($940 x .3 x 7.70) = $3311.10	Conduit is completely on private property	260m in parkade, 40m interior of bldg, 300m total
Vancouver	Conduit in parkade (1 cable in conduit)	1023	200 Granville St Vancouver	200 Burrard St Vancouver	144	SM	2	Conduit	1x4"	2007	G653	($2620 x .3 x 1.45) + ($940 x .3 x 7.70) = $3311.10	Conduit is completely on private property	260m in parkade, 40m interior of bldg, 300m total
Vancouver	Conduit Waterfront Rd (1 cable in conduit)	1020	200 Granville St Vancouver	200 Burrard St Vancouver	24	SM	6	Conduit	1x2"	1998	G653	($650 x .550 x 1.45) + ($940 x .550 x 1.70) = $1,397.27	Conduit is completely on private property	500m in parkade, 50m interior of bldg, 550m total
Vancouver	Conduit Waterfront Rd (1 cable in conduit)	1021	200 Granville St Vancouver	200 Burrard St Vancouver	24	MM	4	Conduit	1x2"	1998	G653	($650 x .550 x 1.45) + ($940 x .550 x 1.70) = $1,397.27	Conduit is completely on private property	500m in parkade, 50m interior of bldg, 550m total

EY ID	Company Category	Location ID	Location Description	Capitalization Date	EY Summary Class	Asset Description
1320	Assets	TRRCBCXN	TERRACE SITE	4/30/2005	Power Equipment	C&D Ap-19 station batteries
1335	Assets	TRRCBCXN	TERRACE SITE	1/6/2015	Multiplex and SONET Equipment	IPTV head end equipment

All equipment from the Cologix data-centre at 1250 Rene Levesque Blvd, Montreal, PQ, 5th floor room, “I” racks I-455, I-456, I-457, including the following:

I-457

Cisco 2911 – isnet1-mtc

Quintum MDX1–mtc

I-456

Bell NNI switch

Cisco 2950 – isnet-cat1-mtc

Cisco 2950 – isnet-cat2-mtc

Cisco 2511 – isnet2-mtc

Cisco 2511 – isnet3-mtc

Cisco ARS1002-mtc3

CERENT-mtc1

DSC DS#1

Codex AC to DC power supply

I-455

Juniper SRX650 srx1-mtc

Juniper SRX650 srx2-mtc

ANNEX 2 TO SCHEDULE A
CUSTOMERS FORMING PART OF REMAINING PURCHASED ASSETS

Account No	Cust Name
030057000	
030076000	
030228002	
030228003	
030477000	
030518000	
030793001	
030794000	
030794001	
030794002	
030794003	
030794004	
030853000	
030882000	
030930000	
030930001	
030965000	
030987000	
030998000	
031085002	
031391000	
031422000	
031456000	
031692000	
031756000	
031848000	
031873000	
031926000	
031906000	
030994004	
031934000	
030651000	
031515000	
030689010	
030392000	
031529001	
031529003	
030994011	

CUSTOMER NAMES REDACTED

030946000	
031548000	
031683000	
030147000	
030799000	
031566000	
030180000	
030905000	
031282000	
031035000	
030127000	
030911000	
031023000	
031152000	
031398000	
031602000	
031784000	
030805000	
030671000	
030773000	
031762000	
031200000	
030468000	
031448000	
030956000	
031494000	
031214000	
031316000	
031437000	
031801000	
030867000	
030901000	
030994015	
031026000	
031062000	
030488000	
030488001	
030488002	
030488003	
030488004	
030488005	
030488006	
030488007	

030488008	
030488009	
030488010	
030488011	
030488012	
030488013	
030488014	
030488015	
030488016	
030488017	
030488018	
030488019	
030994014	
030864000	
031814000	
031816000	
031085000	
031085001	
031481000	
030994007	
031862000	
031735000	
030097000	
031512000	
030017000	
031397000	
031397001	
031397002	
031397003	
031503000	
031335001	
030448000	
030048000	
030440000	
031925000	
031656000	
030627000	
031284000	
031284001	
030140000	
031775000	
031890001	
031933000	

030042000	
031778000	
031870000	
031871000	
030855000	
030855001	
031661000	
030120001	
031727000	
031375000	
031064000	
031066000	
031011000	
030051000	
031713000	
031901000	
032000101	
031574003	
031413000	
030173000	
030258000	
030275000	
030804000	
031834000	
030641004	
030213000	
030816000	
030816001	
030425000	
030425001	
030740000	
031891000	
030052000	
031800000	
030818000	
031890000	
030442000	
031954000	
032102000	
031407001	
031407002	
031407004	
031407007	

031407008	
031407011	
031407014	
031407015	
031407020	
031407021	
031407022	
031407023	
031407025	
031407029	
031407030	
031407032	
031407033	
031407034	
031407036	
031407037	
031407040	
031407041	
031407042	
031407045	
031407048	
031407049	
031407051	
031407054	
031407056	
031407059	
031407067	
031407069	
031407073	
031407080	
031407081	
031407083	
031407087	
031407088	
031407089	
031905000	
031840000	
030817000	
031951000	
031860000	
030803003	
030803000	
031894002	

030517000	
031462000	
031761000	
031950000	
031745000	
031745001	
031944000	
030583000	
031941000	
031695099	
031695101	
031952000	
031952001	
031877000	
030238000	
030866000	
031392000	
031761001	
031888000	
030463000	
031782000	
031882000	
030917000	
031900000	
031831000	
031572000	
031572001	
031911000	
031614000	
031832000	
031830000	
031705000	
031173000	
031173001	
031803000	
031864000	
030461000	
031198000	
031198001	
031198002	
031526000	
031942000	
031157000	

031157001	
031432000	
031924000	
031817000	
031943000	
030565001	
031404000	
031851000	
031798001	
031798002	
031798003	
031798004	
031798005	
031798006	
031798007	
031798008	
031798010	
031798011	
031798012	
031798014	
031798015	
031798016	
031798017	
031798018	
031798019	
031798021	
031798022	
031798023	
030222000	
031886000	
031889000	
032103000	
032104000	
031937000	
030903000	
031038000	
031534000	
031913000	
035002093	
030075000	
031170000	
030642000	
030514000	

031510000	
031510006	
031510010	
031510012	
031510015	
031510018	
031510020	
031510026	
030575000	
031569000	
031922000	
031568000	
031568001	
031568002	
031828000	
031148000	
030812000	
031825000	
031747000	
031908000	
031703000	
031632000	
031939000	
030838000	
031844000	
031844001	
031760000	
031936000	
030652001	
030652002	
030652003	
030652004	
030652005	
030652006	
030449000	
031046000	
031907000	
032106001	
032106002	
032106003	
031598000	
031598001	
031598002	

031717000	
031717001	
031717002	
031717003	
031329000	
031949000	
030641000	
030641001	
030641002	
030641003	
030641010	
031160000	
031567000	
031847000	
031507000	
031507001	
031507003	
031507005	
031507006	
031507008	
031829000	
031733000	
031739000	
031741000	
031742000	
031743000	
031764000	
031818000	
035001891	
035001892	
031855000	
031855001	
031809000	
031842000	
031845000	
031846001	
032100000	
032100001	
032100002	
032100003	
032100004	
032100005	
032100006	

032100007	
032101000	
032105000	
031693001	
031693011	
031693014	
031693018	
031694002	
031694004	
031694012	
031694020	
031694024	
031694028	
031694032	
031694044	
031694056	
031694060	
031694064	
031694068	
031694072	
031694077	
031694080	
031694084	
031694088	
031694092	
031694100	
031694104	
031694109	
031694112	
031694128	
031694132	
031694136	
031694140	
031694145	
031694149	
031694168	
031694174	
031694178	
031694180	
031694201	
031694205	
031694209	
031694213	

031694217	
031694221	
031694223	
031694229	
031694233	
031694237	
031694241	
031694245	
031694250	
031694253	
031694261	
031694272	
031694275	
031694279	
031694281	
031694285	
031694288	
031694294	
031694303	
031694306	
031694310	
031694316	
031694325	
031694327	
031694333	
031694337	
031694344	
031694346	
031694350	
031694354	
031694360	
031694364	
031694371	
031694373	
031694377	
031694386	
031694398	
031694402	
031694406	
031694409	
031694413	
031694417	
031694421	