Case Name:

8440522 Canada Inc. (Re)

IN THE MATTER OF an Application under Section 192 of The Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended and Rules 14.05(2) And 14.05(3) of The Rules of Civil Procedure
AND IN THE MATTER OF a Proposed Arrangement of 8440522 Canada Inc. and involving Data & Audio-Visual Enterprises Holdings Inc., Data & Audio-Visual Enterprises Wireless Inc. and Data & Audio-Visual Enterprises Leasing Inc.

[2013] O.J. No. 2109

2013 ONSC 2509

228 A.C.W.S. (3d) 112

16 B.L.R. (5th) 33

2013 CarswellOnt 5649

Court File Nos. CV-13-10080-00CL and CV-13-10081-00CL

Ontario Superior Court of Justice

H.J. Wilton-Siegel J.

Heard: April 26, 2013.
Judgment: May 1, 2013.

(74 paras.)

Bankruptcy and insolvency law -- Companies' Creditors' arrangement Act (CCAA matters) -- Compromises and arrangements -- Proposals -- Application by Canada Inc. for two interim orders with respect to two plans of arrangement allowed -- Applicant was part of a group of Canadian wireless carriers, Mobilicity Group --- Applicnt sought approval of Acquisition Plan and Recapitalization Plan -- Plans were mutually exclusive, but were being pursued in parallel -- Proposed Plans satisfied statutory requirements -- Each Plan was an "arrangement" -- Applicant

satisfied solvency requirement with respect to both Plans -- Due to the complexity of the Plans, implementation of the transactions and payments was accomplished far more efficiently by means of a plan of arrangement.

Application by Canada Inc. for two interim orders with respect to two plans of arrangement. The applicant was part of a group of Canadian wireless carriers, the Mobilicity Group. The applicant sought approval at proposed meetings of the Voting Security holders of a plan of arrangement based on an agreement with a third party for the acquisition of the Mobilicity Group, the Acquisition Plan, and a plan for the recapitalization of the Mobilicity Group based on a $75 million financing, the Recapitalization Plan. These Plans were mutually exclusive, but were being pursued in parallel at the present time. The Acquisition Plan contemplated the repayment of the outstanding First Lien Notes and the Second Lien Notes. Any remaining proceeds after the above payments were made would be distributed to holders of the Unsecured Debt in satisfaction of their claims in accordance with their priorities, subject to payment of $7 million to the holders of the Second Lien Notes in consideration for having committed to provide the Backstop Financing. The Recapitalization Plan contemplated the subscription by existing debt holders of the Mobilicity Group of New Second Lien Notes in the aggregate principal amount of $75 million. The Recapitalization Plan also contemplated that the Unsecured Senior Notes and the Convertible Notes would be satisfied by the issuance of new common shares, preferred shares and warrants, depending upon the securities being satisfied. The Catalyst Capital Group Inc. owned First Lien Notes having an aggregate principal amount in excess of 25 per cent of the aggregate outstanding principal amount of such Notes. Catalyst had commenced an oppression action against the Mobilicity Group and the purchasers of the Second Lien Notes, alleging that the transactions contemplated by the Note Purchase Agreement were unfairly prejudicial or oppressive to the holders of the First Lien Notes who were not participating in the transaction.

HELD: Application allowed. The applicant acted in good faith in seeking approval of an interim order for a plan of arrangement. The proposed Plans of arrangement satisfied the applicable statutory requirements. Each of the Plans of Arrangement was an "arrangement" within the meaning of s. 192 of the Canada Business Corporations Act. The applicant had satisfied the solvency requirement with respect to both Plans. Due to the complexity of the Plans, it was not practicable for the Mobilicity Group to effect the complex and multi-step transactions contemplated by the Plans of Arrangement without application to the Court. In particular, each of the Plans set out an extensive list of 'Effective Date Transactions' which must be sequenced in a particular manner for tax and other purposes. Implementation of these transactions and payments were accomplished far more efficiently by means of a plan of arrangement.

Statutes, Regulations and Rules Cited:

Business Corporations Act, R.S.O. 1990, c. B.16,

Canada Business Corporations Act, R.B.C. 1985, c. C-44, s. 192, s. 192(1), s. 192(3)

Counsel:

Orestes Pasparakis and *Marc Kestenberg*, for the Applicant, 8440522 Canada Inc.

Robert J. Chadwick, *Fred Myers* and *Brendan O'Neill*, for the Ad Hoc Committee of Noteholders.

David C. Moore and *K. Jones*, for The Catalyst Capital Group Inc.

Janice Wright, for Equity Financial Trust Co.

ENDORSEMENT

1 **H.J. WILTON-SIEGEL J.**:-- The Applicant, 8440522 Canada Inc. (the "Applicant"), moves in separate applications pursuant to section 192 of the *Canada Business Corporations Act*, R.B.C. 1985, c. C-44 (the "CBCA") for two interim orders with respect to two plans of arrangement (the "Plans of Arrangement") involving Data & Audio-Visual Enterprises Holdings Inc. ("Holdings"), Data & Audio-Visual Enterprises Wireless Inc. ("Wireless") and Data & Audio-Visual Enterprises Leasing Inc. ("Leasing", and collectively with the Applicant, the "Mobilicity Group" or "Mobilicity").

2 On April 26, 2013, I granted the two interim orders sought, subject to certain modifications described below (as so amended, the "Interim Orders"), indicating that written reasons would follow shortly. These are the reasons for that decision.

Background

The Parties

3 The Mobilicity Group is a Canadian wireless carrier which provides wireless telecommunication services in Toronto, Ottawa, Calgary, Edmonton and Vancouver. In addition to voice, text, data and long distance cellular services, the Mobilicity Group offers hardware handsets and accessories to its customers. The corporate structure of the Mobilicity Group is as follows.

4 Holdings is a private corporation incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA"). The shareholding interest in Wireless described below constitutes its sole asset.

5 Wireless is a private corporation incorporated under the CBCA. Wireless is wholly-owned by Holdings and is the operating entity of the Mobilicity Group.

6 The Applicant is a private corporation incorporated under the CBCA and is wholly-owned by Wireless.

7 Leasing is a private corporation incorporated under the CBCA that is wholly-owned by Wireless. It holds the Mobilicity Group's network assets and has no active operations.

The Capital Structure of the Mobilicity Group

8 The relevant features of the capital structure of the Mobilicity Group are as follows.

Equity

9 The authorized capital of Holdings consists of: (1) common shares, of which 3,330,141 common shares are held by Data & Audio-Visual Enterprises Investments Inc. ("Investments") and 1,655,070 common shares are held by QCP CW S.A.R.L. ("Quadrangle"); and (2) non-voting Class B shares, convertible into common shares on a one-for-one basis, of which 20,204,790 shares are outstanding and held by Quadrangle. As a result, Investments holds approximately 13.2% of the equity and 66.7% of the voting interest in Holdings, and Quadrangle holds approximately 86.8% of the equity and 33.3% of the voting interest in Holdings.

Debt

Holdings

10 Holdings has issued unsecured senior notes in the aggregate principal amount of $95 million (the "Unsecured Senior Notes"). The Unsecured Senior Notes were issued pursuant to a trust indenture dated April 29, 2011, and mature on September 25, 2018. Interest is capitalized under the terms of the Unsecured Senior Notes. At the date hereof, the aggregate amount outstanding is approximately $147.2 million.

11 Holdings has also issued unsecured pari passu notes (the "Unsecured Pari Passu Notes") and unsecured subordinated notes (the "Unsecured Subordinated Notes"), of which the aggregate principal amount outstanding at March 31, 2013 was approximately $85.1 million and approximately $37.2 million, respectively. The Unsecured Pari Passu Notes and the Unsecured Subordinated Notes (collectively, the "Convertible Notes") are held by Quadrangle. The Unsecured Senior Notes and the Convertible Notes are herein collectively referred to as the "Unsecured Debt" and the holders of the First Lien Notes and the holders of the Unsecured Debt are collectively referred to as the "Voting Securityholders".

Wireless

12 Wireless has issued 9.5% first lien senior secured notes in the aggregate principal amount of $195 million (the "First Lien Notes"). The First Lien Notes were issued pursuant to a trust indenture dated April 29, 2011 (the "First Lien Note Trust Indenture") and mature on April 29, 2018. The

First Lien Notes are guaranteed by Holdings and Leasing. To secure the First Lien Notes, each of Wireless, Holdings and Leasing have entered into general security agreements respecting their assets in favour of the trustee under the First Lien Note Trust Indenture.

13 Wireless has also authorized the issuance of 15.5% senior secured notes in the aggregate amount of $43.25 million (the "Second Lien Notes"), of which the principal amount of $33.25 million of Second Lien Notes are currently outstanding. The Second Lien Notes were issued pursuant to a note purchase, guarantee and back-stop agreement dated February 6, 2013 (the "Note Purchase Agreement"), which contemplated the issue of the Second Lien Notes in three tranches up to a total of $35 million and the payment of a funding fee, in the amount of $8.25 million, to be satisfied by the issue of additional Second Lien Notes at the time of the issue of the first tranche. It is expected that Mobilicity will draw down the third and final tranche prior to the proposed meetings of the Voting Securityholders (as defined below). The Second Lien Notes mature on May 30, 2013. The Second Lien Notes are secured by a second-priority lien on the assets of Mobilicity Group, and are expressed to be subordinated and postponed to payment of the First Lien Notes.

14 The Second Lien Notes were issued to a subset of the holders of the First Lien Notes and the Unsecured Senior Notes. Pursuant to the Note Purchase Agreement, the holders of the Second Lien Notes agreed to backstop a further debt offering of new second lien notes (the "New Second Lien Notes") in the aggregate principal amount of $75 million in connection with the Recapitalization Plan (described below), if it proceeds, which financing would be used to pay out the Second Lien Notes (which mature on May 30, 2013) and provide further funds to be used for corporate purposes (the "Backstop Financing").

The Proposed Plans of Arrangement

15 A novel feature of the relief sought on these applications is that the Applicant seeks approval at proposed meetings of the Voting Securityholders of two possible plans of arrangement - a plan of arrangement based on an agreement with a third party for the acquisition of the Mobilicity Group referred to as the "Acquisition Plan", and a plan for the recapitalization of the Mobilicity Group based on a $75 million financing, which is supported by the Backstop Financing, referred to as the "Recapitalization Plan" (collectively, the "Plans" or the "Plans of Arrangement"). These Plans are mutually exclusive, but are being pursued in parallel at the present time. The decision regarding which Plan will proceed will depend upon whether an agreement is reached with a third party for the acquisition of the Mobilicity Group prior to the meeting of the Voting Securityholders. The following is a brief summary of the salient provisions of the two Plans.

The Acquisition Plan

16 The Acquisition Plan contemplates the repayment of the outstanding First Lien Notes and the Second Lien Notes. Any remaining proceeds after the above payments are made would be distributed to holders of the Unsecured Debt in satisfaction of their claims in accordance with their priorities, subject to payment of $7 million to the holders of the Second Lien Notes in consideration

for having committed to provide the Backstop Financing.

17 Although Mobilicity has indicated that its preference is for implementation of the Acquisition Plan, it has not reached a binding agreement with any purchaser for the sale of the Mobilicity Group despite extensive marketing efforts to date. If an acquisition cannot be completed prior to the proposed meeting of the Voting Securityholders, the Mobilicity Group may adjourn the meeting to be convened to approve the Acquisition Plan and proceed with the meeting to be convened to approve the Recapitalization Plan.

The Recapitalization Plan

18 The Recapitalization Plan contemplates the subscription by existing debt holders of the Mobilicity Group of New Second Lien Notes in the aggregate principal amount of $75 million. The proceeds of the New Second Lien Notes will be used to repay the Second Lien Notes issued by Wireless on February 6, 2013, with the remainder to be used for general corporate purposes. Those parties who subscribe for the New Second Lien Notes will also have the right to exchange a portion of their existing debt securities for additional New Second Lien Notes. The offering of New Second Lien Notes is backstopped pursuant to the Backstop Financing arrangements in the Note Purchase Agreement. The Recapitalization Plan also contemplates that the Unsecured Senior Notes and the Convertible Notes will be satisfied by the issuance of new common shares, preferred shares and warrants, depending upon the securities being satisfied.

Voting Arrangements Under the Plans

19 Under both Plans of Arrangement, the holders of the First Lien Notes vote as a single class and the holders of the Unsecured Debt vote collectively as a separate class. The requisite majority for approval by each class under both Plans of Arrangement is 66 2/3% of the outstanding dollar value for each class of those holders at the meetings in respect of the Plans. The holders of the Second Lien Notes do not have a vote under either of the Plans of Arrangement, as it is proposed that they will be paid out under each of the Plans of Arrangement.

20 The following debtholders have signed support agreements in respect of each of the Plans of Arrangement: (1) holders accounting for 67% of the principal amount outstanding of the First Lien Notes; and (2) holders accounting for 94% of the principal amount outstanding of the Unsecured Senior Notes. In addition, Quadrangle has entered into an amended and restated support agreement dated April 29, 2011 with Equity Financial Trust Company, in its capacity as trustee for the holders of the Unsecured Senior Notes (the "Support Agreement"). The Court has been advised that the effect of the Support Agreement in the present circumstances is that Quadrangle is committed to vote for the Acquisition Plan and the Recapitalization Plan, in its capacity as the holder of the Convertible Notes.

21 Neither of the Plans contemplates a vote by shareholders to approve the Acquisition Plan or the Recapitalization Plan. Mobilicity's board of directors has concluded that the price to be achieved

in any potential sale of the Mobilicity Group would not be sufficient to provide any residual value to the shareholders after satisfaction of all prior debt claims.

The Applicant

22 It is contemplated that the Applicant will be amalgamated with another member of the Mobilicity Group under each of the Plans, and that the amalgamated entity will be the issuer of all of the new securities to be issued under the Recapitalization Plan. As the Applicant has no material liabilities, either directly or under any guarantees, it takes the position that it is solvent for purposes of section 192 of the CBCA.

The Financial Status of the Mobilicity Group

23 The total assets and liabilities of the Mobilicity Group as of December 31, 2012 were approximately $387.5 million and $418 million, respectively, according to the audited financial statements. The Mobilicity Group's business generates revenue of approximately $6 to $7 million per month. For the fiscal quarter ended December 31, 2012, the cost of maintaining the Mobilicity Group's network and paying distributors and other service partners exceeded its revenue and financing proceeds by approximately $12 million prior to financing costs.

24 Given its financial status, the Mobilicity Group has concluded that it needs to either reach an agreement for the sale of its business to a purchaser who is in a position to finance its operations going forward or to restructure its capital and obtain additional financing to advance its business. These two possibilities are reflected in the Acquisition Plan and the Recapitalization Plan, respectively.

25 The Mobilicity Group has engaged financial advisors in an effort to raise additional financing and/or pursue strategic alternatives, including the sale of its business. The Second Lien Note financing arrangements agreed to in the Note Purchase Agreement were put in place to provide short-term financing to Mobilicity to enable it to continue its operations while it pursues these efforts.

The Catalyst Oppression Application

26 The Catalyst Capital Group Inc. ("Catalyst") owns First Lien Notes having an aggregate principal amount in excess of 25% of the aggregate outstanding principal amount of such Notes.

27 Catalyst has commenced an oppression action under the OBCA against the Mobilicity Group and the purchasers of the Second Lien Notes, among others, alleging that the transactions contemplated by the Note Purchase Agreement are unfairly prejudicial or oppressive to the holders of the First Lien Notes who are not participating in the transactions (the "Catalyst Oppression Application"). Catalyst had previously proposed its own reorganization plan to the Mobilicity Group, which was rejected in favour of the transactions contemplated by the Note Purchase

Agreement.

28 In essence, there is an ongoing dispute between Catalyst, on the one hand, and the holders of the Second Lien Notes, supported by other holders of First Lien Notes and Unsecured Senior Notes, on the other. The latter group is also apparently supported by the holder of the Convertible Notes, Quadrangle, in accordance with the terms of the Support Agreement as described above. This is a dispute regarding competing visions for addressing the current financial needs and prospects of the Mobilicity Group.

The Interim Orders Sought on these Applications

29 As mentioned, the Applicant is seeking interim orders that Holdings be permitted to convene and conduct meetings (the "Meetings") of the registered holders of the First Lien Notes of Wireless and of the registered holders of the Unsecured Senior Notes and the Convertible Notes of Holdings, being collectively, the Voting Securityholders, on May 21, 2013 to consider and, if determined advisable, to pass, with or without variation, resolutions adopting and approving either the Acquisition Plan or the Recapitalization Plan.

30 The terms of the proposed interim orders sought on the motions before this Court are generally consistent with the Commercial List's Model Interim Order, with six notable exceptions as follows:

(a) the interim orders do not provide dissent rights to the shareholders of Holdings;

(b) there are limitations on the rights of certain parties described below to terminate, accelerate, amend or declare in default any contract, agreement, instrument or other document involving the Mobilicity Group as a result of the filing of the applications or the taking of steps in furtherance thereof;

(c) the Applicant sought a provision consolidating the Catalyst Oppression Application with these applications (this matter was adjourned in the course of the hearing of these applications);

(d) the Applicant seeks a provision that would count votes cast at the Meetings as votes cast in respect of an "Alternative CCAA Plan", if Mobilicity were to implement the transactions contemplated by the Plans by way of a plan of arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA");

(e) the interim orders provide for early consent deadlines, which relate to an option to receive additional consideration under each Plan in the event a stakeholder provides a commitment to support the Plans by a certain date, and further provides for election dates in respect of the Recapitalization Plan, which relate to participation in the attendant $75 million financing; and

(f) the interim order respecting the Recapitalization Plan includes a provision for a "Senior Noteholder Payment Election" prior to the meetings which, if exercised, among other things, would terminate the right of the holders of the First Lien Notes to vote at the meeting to approve the Acquisition Plan as Voting Securityholders and provide Mobilicity with the right to deliver Wireless to a purchaser free and clear of the claims and security in respect of the First Lien Notes.

The Position of Catalyst

31 Catalyst did not expressly oppose the relief sought on the hearing of these applications. Instead, it sought an adjournment until sometime during the week of April 29, 2013 in order to consider what, if any, objections it wishes to make to the form of the interim orders.

32 Catalyst did not receive the application records for these applications until 1:00 a.m. on April 26, on which date the Court heard the applications commencing at 2:00 p.m. Catalyst says this was the result of a deliberate decision on the part of Mobilicity, which has been working on the Plans since the announcement of the transactions contemplated by the Note Purchase Agreement on February 12, 2013.

33 Catalyst argues that it is unfair to proceed without being given an adequate opportunity to consider the proposed Plans and to make submissions regarding the fairness of the process. Catalyst also raised the following six specific issues on which it did not seek a determination, but which it argued justified a more complete and informed consideration at a later date.

34 First, Catalyst argues that it is an open question whether the Applicant is solvent given the financial position of Mobilicity described above. This is addressed below.

35 Second, Catalyst objects to treating all of the holders of the First Lien Notes in the same class for voting purposes under each of the Plans. It argues that, at the very least, the holders of First Lien Notes who are parties to the Note Purchase Agreement, and therefore were entitled to their *pro rata* share of the $8.25 million funding fee for participating in the Second Lien Note financing, have a different interest from the holders who did not participate in that transaction and should therefore be excluded from the class of holders of First Lien Notes and treated as a separate class.

36 Third, Catalyst objects to certain provisions of the interim orders which require that a stipulated majority of the holders of First Lien Notes who currently support the Plans must consent to any amendments to the Plans or meeting materials. It suggests this constitutes an offensive delegation of powers to these parties.

37 Fourth, Catalyst suggests that the provisions of the interim orders respecting the Recapitalization Plan dealing with the Senior Noteholder Payment Election are contrary to the terms of the First Lien Note Trust Indenture and therefore constitute an unauthorized amendment. As I

indicated in chambers, I do not agree with this interpretation. However, in any event, the Interim Orders now include language in the "paramountcy" paragraph, to which Catalyst also objects as having an uncertain consequence, indicating that nothing in the Interim Orders is intended to affect the substantive rights of any holders of First Lien Notes. This provision is understood to apply, among other things, in respect of the operation of the Senior Noteholder Payment Election.

38 Fifth, Catalyst objects to the "no-default" provision in the Interim Orders saying, correctly, that this affects substantive rights and argues that the Court ought not to be involved in making such an order.

39 Sixth, Catalyst suggests that there is no reason at this time for the provision in the Interim Orders dealing with the counting of votes in the event Mobilicity decides to implement an Alternative CCAA Plan under the CCAA.

Applicable Law

40 The purpose of Interim Orders such as those requested is "to set the wheels in motion for the application process relating to the arrangement and to establish the parameters for the holding of shareholder meetings to consider approval of the arrangement in accordance with the statute": see *Re First Marathon Inc*., [1999] O.J. No. 2805 at para. 9, (Ont. S.C.J.), Blair J. (as he then was) [*First Marathon*]. I note that in *First Marathon*, Blair J. was asked to consider the adequacy of the disclosure in the management information circular that was to be distributed to the security holders for its sufficiency, which is not an issue on these applications.

41 In *Re 45133541 Canada inc*., [2009] Q.J. No. 18337 (Qc. Sup. Ct.) [*45133541*], Gascon, J.C.S. (as he then was) commented that, for the purposes of an interim order of the nature sought on these applications, the Court's analysis is limited to a consideration of whether the proposed plan of arrangement is put forward in good faith and whether the proposed plan complies with the statutory requirements of the CBCA. I agree with this conclusion, which necessarily remits determination of whether the proposed plan of arrangement is "fair and reasonable" to the hearing on the final order. This is particularly appropriate in the present case where it remains to be determined which Plan of Arrangement will be put to the Voting Securityholders for approval.

42 I note, however, that nothing prevents an affected stakeholder from raising issues of a procedural nature prior to the proposed Meetings of the Voting Securityholders in accordance with the provisions of the "come back" provisions of the Interim Orders.

Analysis and Conclusions

43 I propose to deal first with the Catalyst request for an adjournment. I will then address the requirements for approval of an interim order under section 192 of the CBCA.

The Catalyst Request for an Adjournment

44 The request of Catalyst for an adjournment of this hearing was denied for the following reasons.

45 The issues addressed at this stage of an application under section 192 of the CBCA are essentially procedural rather than substantive. In seeking an interim order, an applicant bears the ultimate responsibility for ensuring that the form of interim order satisfies the applicable statutory and contractual procedural requirements. While this is particularly true when an interim order is sought on an *ex parte* basis, it remains the case even if one or more stakeholders raise objections at the time the interim order is sought. Accordingly, a party affected by an interim order has the right to move to vary the order prior to the meeting to be convened to approve the proposed plan of arrangement if it can establish that the Interim Orders do not meet the two criteria addressed by courts at this stage of a plan of arrangement. Indeed, if such a party objects to any procedural aspect of the proposed stakeholder meetings, in my opinion it must raise its objection prior to the meeting of the stakeholders.

46 In the present circumstances, it is undeniable that Catalyst has not had sufficient time to consider its position on the procedural aspects of the Plans and the Meetings addressed in the Interim Orders. However, I am not satisfied that Catalyst will suffer any material prejudice if the Interim Orders are granted, given that Catalyst remains entitled to bring a motion to vary the Interim Orders if it so chooses. Moreover, with the exception of the issue of insolvency, the Court has made no determination on the issues raised by Catalyst, apart from requiring an amendment to the paramountcy provision to clarify that such provision does not affect the substantive rights of the stakeholders in order to address the concerns raised by Catalyst. While the Court has addressed the issue of solvency, I note that Catalyst refrained from arguing directly that Mobilicity was insolvent despite ample knowledge of its current financial position, and that it remains open to Catalyst to move to vary the Court's determination on this issue on the basis of other facts or changed circumstances.

The Requirements for an Interim Order

Demonstration of Good Faith

47 The first requirement for approval of an interim order for a plan of arrangement under section 192 of the CBCA is that the applicant demonstrate that it is acting in good faith in putting forward the proposed plan. I have no difficulty in concluding that the Applicant is acting in good faith in the present circumstances.

48 The Plans are being proposed to further a valid business purpose, namely the continuity of the business of Mobilicity and thereby the preservation of the jobs of its employees and the continuation of its existing relationships with its suppliers and subscribers. In the absence of an Acquisition Plan, the Recapitalization Plan is intended to restructure the debt of the Mobilicity Group to provide it with a capital structure that will allow it to survive and seek to advance its operations.

Compliance with Applicable Statutory Requirements

49 The second requirement for approval of an interim order for a plan of arrangement under section 192 of the CBCA is demonstration that the proposed plan of arrangement satisfies the applicable statutory requirements. At the stage of seeking an interim order, the Applicant must establish that:

1. the proposed arrangement constitutes an "arrangement" as defined under subsection 192(1) of the CBCA;
2. the applicant is not "insolvent" as defined in subsections 192(2) (a) and (b) of the CBCA;
3. it is not "practicable" for the applicant to effect a fundamental change in the nature of the proposed plan of arrangement under any other provision of the CBCA; and
4. the applicant gave notice of the application to the Director appointed under section 260 of the CBCA (the "Director").

See: *Re St. Lawrence & Hudson Railway Co.*, [1998] 82 A.C.W.S. (3d) 895 at para. 13, [1998] O.J. No. 3934, (Ont. C.J. Gen. Div.) per Blair J. (as he then was) [*St. Lawrence*]. I will address each of these matters in turn.

An Arrangement Under Section 192 of the CBCA

50 I do not think it is disputed that, under existing jurisprudence, a plan of arrangement can relate to the compromise of debt. This is also accepted in the Policy Statement of the Director.

51 I have no difficulty in finding that each of the Plans of Arrangement is an "arrangements" within the meaning of section 192 of the CBCA, as they involve;

(a) an amalgamation of two or more corporations;
(b) in the case of the Acquisition Plan, a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;
(c) in the case of each Plan, an exchange of securities of a corporation for property, money or other securities of the corporation or property, money or securities of another body corporate; and
(d) a combination of the foregoing.

The Solvency Requirement

52 The Applicant submits that it satisfies the solvency requirement of section 192 in two ways: (1) by virtue of the Applicant's solvency; and (2) on the basis that the Mobilicity Group will be solvent at the time of the final order.

53 In making these submissions, the Applicant relies in part on the statement of Blair J. in para. 15 of *St. Lawrence* to the effect that section 192 requires only that at least one of the corporate applicants under the proposed plan of arrangement not be insolvent as defined under subsection 192(2) of the CBCA. In addition, the Applicant points to the Policy Statement of the Director, which recognizes that plans of arrangement may proceed where the applicant is insolvent at the time of the interim order but will be solvent at the time of the final order.

54 As mentioned, Catalyst has suggested that there is reason to question the solvency of Mobilicity and therefore the entitlement of the Applicant to use section 192 of the CBCA. Catalyst's principal submission was, however, that the Court should defer a determination on this issue, and the other issues raised by Catalyst, until a hearing during the week of April 29, 2013. For the reasons set out below, I do not consider this to be appropriate. Accordingly, the Court must address this issue at this time. However, in doing so, the Court is relying entirely on the limited information before it, recognizing that additional information or changed circumstances after the date of the hearing may require a reconsideration of this issue.

55 Based on the information before the Court, I conclude that the Applicant has satisfied the solvency requirement of section 192 on the following basis, which addresses the two Plans separately.

56 In the event that the Acquisition Plan proceeds, I think it necessarily follows that Mobilicity will satisfy the solvency requirement. The only viable purchaser of the Mobilicity Group is a purchaser that is sufficiently financed that it will be able to fund repayment of the First Lien Notes and the Second Lien Notes as well as the continuing operations of Mobilicity including servicing its Unsecured Debt. By definition, such a purchaser would need to be a solvent corporation. In such circumstances, Courts have had no difficulty finding that the solvency requirement of section 192 has been satisfied: see, for example, *Re 45133541* at paras. 76 and 77.

57 In the event that the Recapitalization Plan proceeds, the evidence before the Court upon which the Court is relying indicates that the Mobilicity Group would be solvent after implementation of the Plan. The principal effect of the Recapitalization Plan is to convert the Unsecured Debt to equity and to provide sufficient additional working capital upon the completion of the $75 million financing to permit Mobilicity to continue operations for a further, although not indefinite, period of time.

58 In *45133541*, Gascon J.S.C. concluded that a proposed plan that would, when implemented, result in a solvent entity satisfied the solvency requirement on the basis that the applicant could be considered to be solvent at the time of the final order, even if it was insolvent at the time of the interim order. If it were necessary to do so, I would reach a similar conclusion in the present circumstances as I consider the facts in the present applications to be indistinguishable on this issue from those in *45133541*.

59 However, the facts in the present circumstances are stronger than those in *45133541* in one

respect which permits the Court to conclude that the Mobilicity Group is solvent at the present time notwithstanding its recent financial history as described above. In the present case, the requisite majorities of the two classes of Voting Securityholders have already confirmed their support of the Recapitalization Plan, and the $75 million financing is assured by virtue of the Backstop Financing. In these circumstances, the Court can take the implementation of the Recapitalization Plan as a given if there is no Acquisition Plan to be put forward for approval. On the basis that such Plan when implemented would result in a restoration of the solvency of Mobilicity for a period of time, I think that the Court can rely on the existing commitments to implement this Plan, if required, as the basis for a determination that the Mobilicity Group is solvent for the purposes of section 192 of the CBCA.

The Impracticability Test

60 Subsection 192(3) of the CBCA provides that a corporation may apply to a court for an order approving an arrangement where it is not "practicable" for the corporation to effect a fundamental change in the nature of an arrangement under any other provision of the CBCA.

61 The impracticability test is interpreted broadly and considered from a practical business point of view. Courts have confirmed that the threshold of impracticability is relatively low. What is required is that the proposed arrangement be difficult to put into practice under other provisions of the CBCA: see, for example *St. Lawrence* at para. 18 and *45133541* at paras. 80-81.

62 I also note that the Director has indicated that he is of the view that the test would be satisfied by demonstrating that it would be inconvenient or less advantageous to the corporation to proceed under other provisions of the CBCA, and presumably outside the CBCA, provided that section 192 is not used to subvert the procedural and substantive safeguards otherwise available to the stakeholders.

63 In the present case, I accept that, due to the complexity of the Plans, it is not practicable for the Mobilicity Group to effect the complex and multi-step transactions contemplated by the Plans of Arrangement without application to the Court. In particular, each of the Plans sets out an extensive list of 'Effective Date Transactions' which must be sequenced in a particular manner for tax and other purposes. Implementation of these transactions and payments is accomplished far more efficiently by means of a plan of arrangement. If implemented outside of a plan of arrangement, each of these transactions and payments would require separate corporate or contractual authorizations, extensive documentation giving effect to the particular conveyances, transfers, amalgamations, amendments and payments, and manual filings with corporate authorities that would need to be coordinated. In addition, the Applicant requires the provisions of section 192 of the CBCA in order to effect the releases contemplated in each Plan.

Notice to the Director Under the CBCA

64 The Applicant gave notice of the applications, together with copies of all supporting material,

to the Director. The Director advised that he had determined that he did not need to appear or be heard on these applications.

65 However, the Director noted in his correspondence to the Applicants, without taking a position on the matter, that the stay of proceedings (which is understood to mean the "No-Default") clause addressed below is unusual in an arrangement that is not proceeding under the CCAA and that the scope of this provision extends beyond the parties who are affected by the proposed arrangement. This matter is dealt with in the following section.

The "No-Default" Clause

66 The Mobilicity Group intends to continue to conduct its business in the ordinary course during these proceedings, including making payments to creditors and suppliers in the ordinary course and in accordance with past practice. The Mobilicity Group sought a "no-default" clause in the Interim Orders to maintain the status quo during the short period while these proceedings are in progress for the following reasons.

67 Section 6.01(7) of the First Lien Note Trust Indenture provides for an event of default, among other things, in the event that Wireless "commences a voluntary case" "pursuant to or within the meaning of Bankruptcy Law". For this purpose, "Bankruptcy Law" is defined broadly to include "other laws concerning formal or informal moratoria of debt or compositions with creditors, and proceedings seeking reorganization, arrangement, or other relief of debtors". There is, therefore, a legitimate concern that commencement of these applications may give rise to an event of default under the First Lien Note Trust Indenture. In addition, similar, although not identical, provisions exist in the instruments governing the terms of the Unsecured Senior Notes, the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes. More significantly, the Applicant says that the commencement of these applications may also give rise to a right of termination in favour of certain material suppliers, specifically Ericson Canada Inc., Research in Motion Limited, Ingram Micro Inc. and AMDOCS Canadian Managed Services Inc. (collectively, the "Material Suppliers").

68 The Applicant sought a provision in the Interim Orders providing that leave of the Court is required to assert any right of termination, acceleration, amendment or declaration of default in respect of any contract between the Mobilicity Group and any of the Material Suppliers and in respect of First Lien Notes or the Unsecured Debt (herein, the "No-Default Clause").

69 "No-default" provisions have been granted in similar circumstances in the past. In *45133541*, Gascon J.S.C. canvassed the law regarding similar provisions, finding as follows:

> [102] The wording of Subsection 192(4) *CBCA* is similar to that of the shareholders oppression remedy found at Subsection 241(3). It suggests a broad statutory discretion for the Court to exercise its powers.

[103] Quebec courts have indeed adopted a liberal interpretation of Subsection 241(3) and confirmed that in light of its broad wording, the powers enumerated therein are not "limitative", but rather, modalities of the courts' general power to issue orders.

[104] In statutory interpretation, it is well known that the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme and object of the Act and the intention of Parliament in relation to the Act.

[105] From that perspective, the words used by Parliament at Subsection 192(4) not only suggest a large discretion for the Court, but also one that should be reasonably exercised in furtherance of the object of the provision. Namely, to facilitate an arrangement and, at the very least, to allow for it to be subject to a meaningful approval process.

[106] In *Trizec*, Forsyth J. made the following observations on these broad powers under Subsection 192(4) and their exercise in respect of the rights enjoyed by secured creditors:

> Subsection 4 of section 192 gives broad power to the Court with respect, inter alia, to interim orders. The power to restrain, for example, a secured creditor is not one of the specific powers delineated, and if it exists must be found in the general language which states, the Court "may make any interim or final order it thinks fit".
>
> On consideration of the whole of the section and the purposes of same, I am satisfied that in appropriate circumstances, given that the arrangement might affect the rights of secured creditors, <u>the power to restrain enforcement of security and thus attempt to preserve the status quo pending consideration of the arrangement by parties affected can be found in the broad general language of section 192(4)</u>." [Emphasis added in the original]

[107] In that case, Subsection 192(4) was interpreted as allowing the Court to restrain creditors' rights by issuing, in addition to a no-default order, a stay of proceedings similar to the stay order requested from this Court.

[108] Interim Orders which prevent creditors from calling defaults under various credit agreements have also been rendered in the following cases dealing with arrangements under Section 192 *CBCA*:

-*Call-Net* Interim Order, para. 48:

"THIS COURT ORDERS THAT no party, including without limitation the Trustee, shall have any rights to terminate, accelerate or treat as accelerated, amend or declare in default any contract or other agreement to which Call-Net is a party due to Arrangeco or Call-Net being a party to this proceeding or having made an application to this Court pursuant to section 192 of the CBCA." Call-Net Interim Order, para. 48:

-*Tembec* Interim Order, para. 29:

"THIS COURT ORDERS THAT no person, including, without limitation any Noteholders or Indenture Trustees, shall have any rights to terminate, accelerate, amend or declare in default any contract or other agreement including, without limitation, the Indentures, to which any of the Applicants or Tembec Inc. are a party, due to the Applicants being a party to this proceeding, having made an application to this Court pursuant to section 192 of the CBCA or having failed to make any interest or other payments during the period prior to such time as the within Arrangement is approved by the Court and implemented by the Applicants, without further order of this Court." [Emphasis added]

-*Telesystem* Interim Order, para. 35:

"DECLARES that the filing and presentation of the present Application, the I issuance of the Interim Order, the filing of the Plan of Arrangement into the Court record and the passing of the Arrangement Resolution by the TIW Shareholders do not constitute an event of default pursuant to the Amended 7.00% Equity Subordinated Debenture Indenture, as amended (the 'Indenture')."

> [109] These various decisions support a broad statutory discretion for the courts to issue orders in the context of Section 192 arrangements.

70 I am satisfied that the Court has the power under section 192 to issue a "no-default" order in appropriate circumstances, although I think this is a power that should only be used in special circumstances given that section 192 operates with respect to solvent corporations.

71 In the present circumstances, the provisions are directed toward a legitimate objective and are limited in operation to the only circumstances in which an event of default could create material difficulties for Mobilicity in its efforts to sell its business to a third party or to restructure. I note as well that, in view of the majorities already committed to supporting the proposed Plans, the holders of each of the Unsecured Senior Notes, the Unsecured Pari Passu Notes, the Unsecured Subordinated Notes and the First Lien Notes are in a position to waive any defaults that would arise as a result of these applications (the No-Default Clause also provides that the holders of the Second Lien Notes consent to such a provision in respect of such Notes).

72 In addition, and in any event, as the Interim Orders were essentially obtained on an *ex parte* basis, any affected party, including Catalyst, has the right under the Interim Orders to move to vary this provision of the Interim Orders. In these circumstances, I think it appropriate to grant the requested relief regarding the "No-Default" provisions in the Interim Orders at this time.

73 Accordingly, the Interim Orders approved by the Court included the No-Default Clause sought by the Applicant.

Conclusion

74 For the above reasons, the Interim Orders were granted in the forms attached to this Endorsement as Schedules A and B, which reflect amendments to the forms of interim order sought that have been agreed to by Catalyst regarding: (1) an addition to the paramountcy provision; and (2) an addition of a formal "come-back" provision.

H.J. WILTON-SIEGEL J.

* * * * *

"SCHEDULE "A"

Court File No. CV13-10081-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR. JUSTICE WILTON-SIEGEL

FRIDAY, THE 26TH DAY OF APRIL, 2013

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC., AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

INTERIM ORDER
(Acquisition Plan)

THIS MOTION made by the Applicant, 8440522 Canada Inc. (the "Applicant") for an interim order for advice and directions pursuant to section 192 of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended (the "CBCA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Notice of Application and the affidavit of William E. Aziz sworn April 24, 2013, (the "Aziz Affidavit"), including the Plan of Arrangement (the "Acquisition Plan"), which is attached as Schedule C to the draft notice of meeting and information circular (collectively, the "Information Circular"), which is attached as Exhibit B to the Aziz Affidavit and on hearing the submissions of counsel for the Applicant and the Initial Consenting Noteholders (as defined in the Acquisition Plan) and on being advised that the Director appointed under the CBCA (the "Director") does not consider it necessary to appear,

Definitions

THIS COURT ORDERS that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Acquisition Plan or otherwise as specifically defined herein.

The Meeting

THIS COURT ORDERS that Data & Audio-Visual Enterprises Holdings Inc. ("Holdings") is permitted to call, hold and conduct a meeting (the "Meeting") of the registered holders of 9.5% first lien senior secured notes (the "First Lien Notes") of Data & Audio-Visual Enterprises Wireless Inc. ("Wireless"), registered holders of 15% senior unsecured debentures (the "Unsecured Senior Notes") of Holdings, registered holders of unsecured convertible debentures of Holdings ranking pari passu with the Unsecured Senior Notes (the "Unsecured Pari Passu Notes") and registered

holders of unsecured convertible debentures of Holdings ranking subordinate to the Unsecured Senior Notes and the Unsecured Pari Passu Notes (the "Unsecured Subordinated Notes"; and together with the Unsecured Senior Notes and the Unsecured Pari Passu Notes, collectively, the "Unsecured Notes"; and collectively the registered holders of the Unsecured Notes and the registered holders of the First Lien Notes, the "Voting Securityholders") to be held at the offices of Norton Rose Canada LLP, Royal Bank Plaza, South Tower, 200 Bay Street, Suite 3800, Toronto, Ontario, M5J 2Z4 on May 21, 2013 at 10:30 a.m. to consider and, if determined advisable, pass, with or without variation, a resolution adopting and approving, with or without variation, the Acquisition Plan (collectively, the "Arrangement Resolution").

THIS COURT ORDERS that the Meeting shall be called, held and conducted in accordance with the CBCA, the Acquisition Plan, the Information Circular, and the articles and by-laws of the Applicant, subject to what may be provided hereafter and subject to any further order of this Court.

THIS COURT ORDERS that a member of the board of directors of Holdings, shall preside as the chair of the Meeting and, subject to this Order and any further order of the Court, shall decide all matters relating to the conduct of the Meeting.

THIS COURT ORDERS that the record date (the "Record Date") for determination of the Voting Securityholders entitled to notice of, and to vote at, the Meeting shall be April 25, 2013.

THIS COURT ORDERS that the only persons entitled to attend or speak at the Meeting shall be:

registered holders of the First Lien Notes as at the Record Date, or their proxyholders;

registered holders of the Unsecured Senior Notes as at the Record Date, or their proxyholders;

registered holders of the Unsecured Pari Passu Notes as at the Record Date, or their proxyholders;

registered holders of the Unsecured Subordinated Notes as at the Record Date, or their proxyholders;

legal counsel and advisors of any of the foregoing;

legal counsel to the Initial Consenting Noteholders;

legal counsel to the Supporting First Lien Noteholders;

the officers, directors, and legal counsel, of the Applicant, Holdings and Wireless;

the Unsecured Senior Notes Indenture Trustee and its legal counsel;

the First Lien Note Indenture Trustee and its legal counsel;

the Director; and

other persons who may receive the permission of the chair of the Meeting.

THIS COURT ORDERS that the Mobilicity Group may transact such other business at the Meeting as is contemplated in the Information Circular, or as may otherwise be properly before the Meeting.

Quorum

THIS COURT ORDERS that quorum at the Meeting shall be one registered holder of the First Lien Notes and two registered holders of any of the Unsecured Notes, present in person or by proxy at the opening of the Meeting who are entitled to vote at the Meeting.

Amendments to the Acquisition Plan

THIS COURT ORDERS that the Applicant is authorized to make, subject to: (i) the prior consent of the Requisite Majority of the Initial Consenting Noteholders (to the extent the amendment, restatement, modification or supplement described hereinafter may affect holders of the First Lien Notes, holders of the Unsecured Senior Notes, or the holders of the Existing Second Lien Notes); and (ii) paragraph 10 below, such amendments, restatements, modifications or supplements to the Acquisition Plan as it may determine without any additional notice to the Voting Securityholders, or others entitled to receive notice under paragraphs 13 and 14 hereof, and the Acquisition Plan, as so amended, modified, restated or supplemented shall be the Acquisition Plan to be submitted to the Voting Securityholders at the Meeting and shall be the subject of the Arrangement Resolution. Amendments, modifications, restatements or supplements may be made following the Meeting, but shall be subject to review and, if appropriate, further direction by this Court at the hearing for the final approval of the Acquisition Plan.

THIS COURT ORDERS that, if any amendments, modifications or supplements to the Acquisition Plan as referred to in paragraph 9, above, would, if disclosed, reasonably be expected to affect a Voting Securityholder's decision to vote for or against the Arrangement Resolution, notice of such amendment, modification or supplement shall be distributed by the Applicant to the Voting Securityholders by such method as the Applicant may determine is most practicable and expedient in the circumstances.

Amendments to the Information Circular

THIS COURT ORDERS that, subject to paragraph 16 below, the Applicant is authorized to make such amendments, revisions and/or supplements to the draft Information Circular as it may determine and the Information Circular, as so amended, revised and/or supplemented, shall be the Information Circular to be distributed in accordance with paragraphs 13 and 14.

Adjournments and Postponements

THIS COURT ORDERS that the Applicant, if it deems advisable, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Voting Securityholders respecting the adjournment or postponement, and notice of any such adjournment or postponement shall be given by the Applicant by such method as the Applicant may determine is most practicable and expedient in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

Notice of Meeting

THIS COURT ORDERS that, in order to effect notice of the Meeting, the Applicant shall send the Information Circular (including this Interim Order), the notice of the Meeting and the forms of proxy,. along with such amendments or additional documents as the Applicant may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the "Meeting Materials"), to the following:

> the Voting Securityholders at the close of business on the Record Date, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by one or more of the following methods:
>
> > by pre-paid ordinary or first class mail at the addresses of the Voting Securityholders as they appear on the books and records of Holdings, or its registrar and transfer agent, at the close of business on the Record Date and if no address is shown therein, then the last address of the person known to the corporate secretary of Holdings;

by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i) above; or

by facsimile or electronic transmission to any Voting Securityholder, who is identified to the satisfaction of the Applicant, who requests such transmission in writing and, if required by the Applicant, who is prepared to pay the charges for such transmission;

the Unsecured Senior Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting;

the First Lien Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the meeting; and

the respective directors and auditors of Holdings, Wireless, Leasing and the Applicant and to the Director appointed under the CBCA, by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or, with the consent of the person, by facsimile or electronic transmission, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting.

and that compliance with this paragraph shall constitute sufficient notice of the Meeting.

THIS COURT ORDERS that the Applicant is hereby directed to distribute the Notice of Application and the Information Circular (including this Interim Order), and any other communications or documents determined by the Applicant to be necessary or desirable (collectively, the "Court Materials") to the registered Existing Equity Holders of Holdings by any method permitted for notice to the Voting Securityholders as set forth in paragraph 13 above, concurrently with the distribution described in paragraph 13 of this Interim Order. Distribution to such persons shall be to their addresses as they appear on the books and records of Holdings at the close of business on the Record Date.

THIS COURT ORDERS that accidental failure or omission by the Applicant to give notice of the Meeting or to distribute the Meeting Materials or Court Materials to any person entitled by this Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of the Applicant, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Interim Order nor shall it invalidate any

resolution passed or proceedings taken at the Meeting. If any such failure or omission is brought to the attention of the Applicant, it shall use its best efforts to rectify it by the method and in the time most reasonably practicable in the circumstances.

THIS COURT ORDERS that the Applicant is hereby authorized to make, with the consent of the Requisite Majority of the Initial Consenting Noteholders, such amendments, revisions or supplements to the Meeting Materials and Court Materials (subject to paragraphs 9 and 10 in the case of any amendments, revisions or supplements to the Acquisition Plan), as the Applicant may determine in accordance with the terms of the Arrangement Agreement and the Acquisition Plan ("Additional Information"), and that notice of such Additional Information may, subject to paragraph 10, above, be distributed by press release, newspaper advertisement, pre-paid ordinary mail, or by the method most reasonably practicable and expedient in the circumstances, as determined by the Applicant.

Service

THIS COURT ORDERS that distribution of the Meeting Materials and Court Materials pursuant to paragraphs 13 and 14 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 13 and 14 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 10, above.

Solicitation and Revocation of Proxies

THIS COURT ORDERS that Holdings and the Applicant are authorized to use the proxies substantially in the form of the drafts accompanying the Information Circular, with such amendments and additional information as Holdings and the Applicant may determine are necessary or desirable, with the consent of the Requisite Majority of the Initial Consenting Noteholders, subject to the terms of the Arrangement Agreement and the Acquisition Plan. Holdings and the Applicant are authorized, at their expense, to solicit proxies, directly or through their officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as they may determine. Holdings or the Applicant may waive, with the consent of the Requisite Majority of the Initial Consenting Noteholders, the time limits set out in the Information Circular for the deposit or revocation of proxies by Voting Securityholders, if Holdings or the Applicant deems it advisable to do so.

THIS COURT ORDERS that Voting Securityholders shall be entitled to revoke their proxies in accordance with section 148(4) of the CBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to s.148(4)(a)(i) of the CBCA: (a) may be deposited at the registered office of the Applicant or with the transfer agent of

the Applicant as set out in the Information Circular; and (b) any such instruments must be received by the Applicant or its transfer agent not later than 5:00 p.m. two business days immediately preceding the Meeting (or any adjournment or postponement thereof).

Voting

THIS COURT ORDERS that the only persons entitled to vote in person or by proxy on the Arrangement Resolution, or such other business as may be properly brought before the Meeting, shall be registered holders as at the Record Date of:

the First Lien Notes (or their proxyholders);

the Unsecured Senior Notes (or their proxyholders);

the Unsecured Pari Passu Notes (or their proxyholders); and

the Unsecured Subordinated Notes (or their proxyholders).

Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast. Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution.

THIS COURT ORDERS that votes shall be taken at the Meeting on the basis of one vote for each dollar of Voting Claim of the First Lien Notes, Unsecured Senior Notes, Unsecured Pari Passu Notes or Unsecured Subordinated Notes, calculated using the principal amount plus accrued and unpaid interest showing on the records of Holdings or Wireless, as applicable, as at the Record Date on each First Lien Note, Unsecured Senior Note, Unsecured Pari Passu Note and Unsecured Subordinated Note, respectively, and that, unless otherwise ordered by this Court, the Arrangement Resolution can only be passed, with or without variation by:

the registered holders of the First Lien Notes, who collectively represent at least two-thirds in value of the Voting Claims of all First Lien Noteholders who actually vote on the Arrangement (in person or by proxy) at the Meeting; and

the registered holders of the Unsecured Notes who collectively represent at least two-thirds in value of the Voting Claims of all Unsecured Noteholders who actually vote (in person or by proxy) at the Meeting.

Such votes shall be sufficient, but not necessary unless otherwise ordered by this Court, to authorize the Applicant to do all such acts and things as may be necessary or desirable to give effect to the Acquisition Plan on a basis consistent with what is provided for in the Information Circular without the necessity of any further approval by the Voting Securityholders, subject only to final approval

of the Acquisition Plan by this Honourable Court.

THIS COURT ORDERS that, for purposes of determining whether or not the Acquisition Plan has received the affirmative vote of the Required Majority of the Unsecured Noteholder Class and the First Lien Noteholder Class, the tabulation agent for the Creditor's Meeting will separately record the vote of each Voting Securityholder and in respect of the Unsecured Noteholder Class shall first record the vote of the Unsecured Senior Noteholders, then the votes of the Unsecured Pari Passu Noteholders, and then the votes of the Unsecured Subordinated Noteholders.

THIS COURT ORDERS that, notwithstanding any provision of this Interim Order, to the extent that the Applicant exercises the Senior Noteholder Payment Election (as defined below), the First Lien Noteholders shall be treated as Unaffected Creditors for all purposes under the Acquisition Plan and any votes cast by the First Lien Noteholders at the Creditor's Meeting shall be disregarded.

Senior Noteholder Payment Election

THIS COURT ORDERS that, from and after the date of this Interim Order, the Applicant shall, with the consent of the Requisite Majority of the Initial Consenting Noteholders, be authorized to elect (the "Senior Noteholder Payment Election") to: (1) repay in full all Indebtedness (as defined in the First Lien Indenture) owing to the First Lien Noteholders at the time of such repayment in an amount to be determined by the First Lien Note Indenture Trustee (a "First Lien Repayment") or (2) repay in full all principal and accrued interest (under section 2.01 of the First Lien Indenture) owing under the First Lien Notes at the time of such repayment (a "First Lien Payment") and pay into escrow for the sole benefit of the First Lien Noteholders (subject only to any rights or liens of the First Lien Note Indenture Trustee pursuant to the First Lien Note Indenture or otherwise) any additional amounts, fees or premiums or other Indebtedness that may be claimed to be owing to the First Lien Noteholders at the time of such repayment (the "Holdback Amount" and, together with the First Lien Payment, a "First Lien Payment & Escrow"). Any such First Lien Repayment or First Lien Payment & Escrow shall be made in consideration for the complete satisfaction, release and discharge of all Indebtedness owing to the First Lien Noteholders pursuant to the First Lien Notes and any and all security granted in favour of the First Lien Noteholders as security for the Indebtedness, with such satisfaction, release and discharge becoming effective upon any such First Lien Repayment or First Lien Payment & Escrow being made. Following any First Lien Payment & Escrow, the final amount to be paid to First Lien Noteholders from the Holdback Amount (if any) shall be determined by the Court or by agreement of the Applicant, the Initial Consenting Noteholders and any First Lien Noteholder with respect to its pro rata share of the Holdback Amount. Any remaining amount of the Holdback Amount, after payments (if any) have been made in respect of any or all First Lien Noteholders (whether by Court order or agreement as above) shall be distributed in accordance with the terms of the Acquisition Plan or as otherwise ordered by this Court.

Early Consent Deadline

THIS COURT ORDERS that the Early Consent Deadline shall be the date that is five days after the Purchase Price Notice Date (or such other date as the Applicant, Holdings and the Requisite Majority of the Initial Consenting Noteholders may agree).

THIS COURT ORDERS that compliance with the notice requirement of paragraphs 13 and 14 shall constitute sufficient notice of the Early Consent Deadline.

Alternative CCAA Acquisition Plan

THIS COURT ORDERS that, pursuant to a further order of this Court, votes cast at the Meeting in respect of the Acquisition Plan may count as votes cast in respect of an Alternative CCAA Plan, on the terms and conditions set forth in the Acquisition Plan.

Hearing of Application for Approval of the Acquisition Plan

THIS COURT ORDERS that following the Meeting, and in accordance with the terms of any Arrangement Agreement, the Applicant may, but shall not be required to, apply to this Court for final approval of the Acquisition Plan on a date to be determined by the Applicant and this Court (the "Final Hearing Date").

THIS COURT ORDERS that distribution of the Notice of Application and the Information Circular (including the Interim Order), when sent in accordance with paragraphs 13 and 14 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is served in accordance with paragraph 30.

THIS COURT ORDERS that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for the Applicant as soon as reasonably practicable, and, in any event, no less than five (5) days before the date set by the Court for the hearing of this Application at the following addresses:

NORTON ROSE CANADA LLP
TD South Tower
Suite 2300
Toronto-Dominion Centre
79 Wellington Street West
P.O. Box 128
Toronto, Ontario M5K 1H1

Attention: Orestes Pasparakis and Marc Kestenberg

THIS COURT ORDERS that, subject to further order of this Court, the only persons entitled to

appear and be heard at the hearing of the within Application shall be:

the members of the Mobilicity Group;

the Director;

legal counsel to the Initial Consenting Noteholders; and

any person who has filed and served a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the Rules of Civil Procedure.

THIS COURT ORDERS that any materials to be filed by the Mobilicity Group in support of the within Application for final approval of the Acquisition Plan may be filed up to one day prior to the hearing of the Application without further order of this Court.

THIS COURT ORDERS that in the event the within Application for final approval does not proceed on the date set by the Court for the hearing of this Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 30 shall be entitled to be given notice of the adjourned date.

No Right to Declare Default

THIS COURT ORDERS that, (1) unless leave of this Court is granted on five days' notice to the Applicant, from 12:01 am on the date of this Interim Order until and including the earlier of June 30, 2013 and the Effective Date: no holder of the First Lien Notes, Existing Second Lien Notes, the Unsecured Senior Notes, the Unsecured Pari Passu Notes or the Unsecured Subordinated Notes, nor any of the following material suppliers to the Mobilicity Group: Ericsson Canada Inc.; Ingram Micro Inc., AMDOCS Canadian Managed Services, Inc., and Research In Motion Limited, as well as their affiliates, successors and permitted assigns (each a "Material Supplier") shall have any rights to terminate, accelerate, amend or declare in default any contract, agreement, instrument or other document to which any member of the Mobilicity Group are a party due to any member of the Mobilicity Group being a party to this proceeding or having made an application to this Court pursuant to section 192 of the CBCA or taking any steps in furtherance thereof; and (2) on consent of the holders of the Existing Second Lien Notes, all holders of the Existing Second Lien Notes are hereby stayed from enforcing the payment or security in respect of the Existing Second Lien Notes.

THIS COURT ORDERS that the Mobilicity Group shall provide a copy of this Interim Order to each Material Supplier within 5 business days of the date of this Interim Order.

Precedence

THIS COURT ORDERS that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the First Lien

Notes, Unsecured Senior Notes, the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes, or the articles or by-laws or any shareholders agreement of any member of the Mobilicity Group, this Interim Order shall govern. For greater certainty nothing in this Order shall affect the substantive rights of any First Lien Noteholder.

Extra-Territorial Assistance

THIS COURT seeks and requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Court in carrying out the terms of this Interim Order.

Variance

THIS COURT ORDERS that the Applicant shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Court may direct.

THIS COURT ORDERS that the requirement for service of the Notice of Motion is hereby dispensed with.

General

1. THIS COURT ORDERS that any interested party (including the Applicant) may apply to this Court to vary or amend this Order (a) on not less than four (4) days notice to the Applicant, counsel to the Initial Consenting Noteholders and any other party or parties likely to be affected by the Order sought; and (b) within seven (7) days of the distribution of the Meeting Materials as set out in Paragraphs 13 and 14, or upon such other notice, if any, as this Court may order.

* * * * *

SCHEDULE "B"

Court File No. CV 13-10080-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR. JUSTICE WILTON-SIEGEL

FRIDAY, THE 26TH DAY OF APRIL, 2013

IN THE MATTER OF AN APPLICATION UNDER SECTION 192 OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED, AND RULES 14.05(2) AND 14.05(3) OF THE RULES OF CIVIL PROCEDURE

AND IN THE MATTER OF A PROPOSED ARRANGEMENT OF 8440522 CANADA INC., AND INVOLVING DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND DATA & AUDIO-VISUAL ENTERPRISES LEASING INC.

INTERIM ORDER
(Recapitalization Plan)

THIS MOTION made by the Applicant, 8440522 Canada Inc. (the "Applicant") for an interim order for advice and directions pursuant to section 192 of the Canada Business Corporations Act, R.S.C. 1985, c. C-44, as amended (the "CBCA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Notice of Application and the affidavit of William E. Aziz sworn April 24, 2013, (the "Aziz Affidavit"), including the Plan of Arrangement (the "Recapitalization Plan"), which is attached as Schedule E to the draft notice of meeting and information circular (collectively, the "Information Circular"), which is attached as Exhibit A to the Aziz Affidavit and on hearing the submissions of counsel for the Applicant and the Initial Consenting Noteholders (as defined in the Recapitalization Plan) and on being advised that the Director appointed under the CBCA (the "Director") does not consider it necessary to appear,

Definitions

THIS COURT ORDERS that all definitions used in this Interim Order shall have the meaning ascribed thereto in the Recapitalization Plan or otherwise as specifically defined herein.

The Meeting

THIS COURT ORDERS that Data & Audio-Visual Enterprises Holdings Inc. ("Holdings") is permitted to call, hold and conduct a meeting (the "Meeting") of the registered holders of 9.5% first lien senior secured notes (the "First Lien Notes") of Data & Audio-Visual Enterprises Wireless Inc. ("Wireless"), registered holders of 15% senior unsecured debentures (the "Unsecured Senior Notes") of Holdings, registered holders of unsecured convertible debentures of Holdings ranking pari passu with the Unsecured Senior Notes (the "Unsecured Pari Passu Notes") and registered holders of unsecured convertible debentures of Holdings ranking subordinate to the Unsecured Senior Notes and the Unsecured Pari Passu Notes (the "Unsecured Subordinated Notes"; and

together with the Unsecured Senior Notes and the Unsecured Pari Passu Notes, collectively, the "Unsecured Notes"; and collectively the registered holders of the Unsecured Notes and the registered holders of the First Lien Notes, the "Voting Securityholders") to be held at the offices of Norton Rose Canada LLP, Royal Bank Plaza, South Tower, 200 Bay Street, Suite 3800, Toronto, Ontario, M5J 2Z4 on May 21, 2013 at 10:00 am to consider and, if determined advisable, pass, with or without variation, a resolution adopting and approving, with or without variation, the Recapitalization Plan (collectively, the "Arrangement Resolution").

THIS COURT ORDERS that the Meeting shall be called, held and conducted in accordance with the CBCA, the Recapitalization Plan, the Information Circular, and the articles and by-laws of the Applicant, subject to what may be provided hereafter and subject to any further order of this Court.

THIS COURT ORDERS that a member of the board of directors of Holdings, shall preside as the chair of the Meeting and, subject to this Order and any further order of the Court, shall decide all matters relating to the conduct of the Meeting.

THIS COURT ORDERS that the record date (the "Record Date") for determination of the Voting Securityholders entitled to notice of, and to vote at, the Meeting shall be April 25, 2013.

THIS COURT ORDERS that the only persons entitled to attend or speak at the Meeting shall be:

registered holders of the First Lien Notes as at the Record Date, or their proxyholders;

registered holders of the Unsecured Senior Notes as at the Record Date, or their proxyholders;

registered holders of the Unsecured Pari Passu Notes as at the Record Date, or their proxyholders;

registered holders of the Unsecured Subordinated Notes as at the Record Date, or their proxyholders;

legal counsel and advisors of any of the foregoing;

legal counsel to the Initial Consenting Noteholders;

legal counsel to the Supporting First Lien Noteholders;

the officers, directors, and legal counsel, of the Applicant, Holdings and Wireless;

the Unsecured Senior Notes Indenture Trustee and its legal counsel;

the First Lien Note Indenture Trustee and its legal counsel;

the Director; and

other persons who may receive the permission of the chair of the Meeting.

THIS COURT ORDERS that the Mobilicity Group may transact such other business at the Meeting as is contemplated in the Information Circular, or as may otherwise be properly before the Meeting.

Quorum

THIS COURT ORDERS that quorum at the Meeting shall be one registered holder of the First Lien Notes and two registered holders of any of the Unsecured Notes, present in person or by proxy at the opening of the Meeting who are entitled to vote at the Meeting.

Amendments to the Recapitalization Plan

THIS COURT ORDERS that the Applicant is authorized to make, subject to: (i) the prior consent of the Initial Consenting Noteholders (to the extent the amendment, restatement, modification or supplement described hereinafter may affect holders of the First Lien Notes, holders of the Unsecured Senior Notes, holders of the Existing Second Lien Notes, or the Backstop Parties); and (ii) paragraph 10 below, such amendments, restatements, modifications or supplements to the Recapitalization Plan as it may determine without any additional notice to the Voting Securityholders, or others entitled to receive notice under paragraphs 13 and 14 hereof, and the Recapitalization Plan, as so amended, modified, restated or supplemented shall be the Recapitalization Plan to be submitted to the Voting Securityholders at the Meeting and shall be the subject of the Arrangement Resolution. Amendments, modifications, restatements or supplements may be made following the Meeting, but shall be subject to review and, if appropriate, further direction by this Court at the hearing for the final approval of the Recapitalization Plan.

THIS COURT ORDERS that, if any amendments, modifications or supplements to the Recapitalization Plan as referred to in paragraph 9, above, would, if disclosed, reasonably be expected to affect a Voting Securityholder's decision to vote for or against the Arrangement

Resolution, notice of such amendment, modification or supplement shall be distributed by the Applicant to the Voting Securityholders by such method as the Applicant may determine is most practicable and expedient in the circumstances.

Amendments to the Information Circular

THIS COURT ORDERS that, subject to paragraph 16 below, the Applicant is authorized to make such amendments, revisions and/or supplements to the draft Information Circular as it may determine and the Information Circular, as so amended, revised and/or supplemented, shall be the Information Circular to be distributed in accordance with paragraphs 13 and 14.

Adjournments and Postponements

THIS COURT ORDERS that the Applicant, if it deems advisable, is specifically authorized to adjourn or postpone the Meeting on one or more occasions, without the necessity of first convening the Meeting or first obtaining any vote of the Voting Securityholders respecting the adjournment or postponement, and notice of any such adjournment or postponement shall be given by the Applicant by such method as the Applicant may determine is most practicable and expedient in the circumstances. This provision shall not limit the authority of the Chair of the Meeting in respect of adjournments and postponements.

Notice of Meeting

THIS COURT ORDERS that, in order to effect notice of the Meeting, the Applicant shall send the Information Circular (including this Interim Order), the notice of the Meeting, the forms of proxy and an Election Form along with such amendments or additional documents as the Applicant may determine are necessary or desirable and are not inconsistent with the terms of this Interim Order (collectively, the "Meeting Materials"), to the following:

> the Voting Securityholders at the close of business on the Record Date, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting, by one or more of the following methods:
>
> > by pre-paid ordinary or first class mail at the addresses of the Voting Securityholders as they appear on the books and records of Holdings, or its registrar and transfer agent, at the close of business on the Record Date and if no address is shown therein, then the last address of the person known to the corporate secretary of Holdings;
> >
> > by delivery, in person or by recognized courier service or inter-office mail, to the address specified in (i) above; or

by facsimile or electronic transmission to any Voting Securityholder, who is identified to the satisfaction of the Applicant, who requests such transmission in writing and, if required by the Applicant, who is prepared to pay the charges for such transmission;

the Unsecured Senior Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting;

the First Lien Note Indenture Trustee (as defined in the Information Circular) at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the meeting; and

the respective directors and auditors of Holdings, Wireless, Leasing and the Applicant and to the Director appointed under the CBCA, by delivery in person, by recognized courier service, by pre-paid ordinary or first class mail or, with the consent of the person, by facsimile or electronic transmission, at least twenty-one (21) days prior to the date of the Meeting, excluding the date of sending and the date of the Meeting.

and that compliance with this paragraph shall constitute sufficient notice of the Meeting.

THIS COURT ORDERS that the Applicant is hereby directed to distribute the Notice of Application and the Information Circular (including this Interim Order), and any other communications or documents determined by the Applicant to be necessary or desirable (collectively, the "Court Materials") to the registered Existing Equity Holders of Holdings by any method permitted for notice to the Voting Securityholders as set forth in paragraph 13 above, concurrently with the distribution described in paragraph 13 of this Interim Order. Distribution to such persons shall be to their addresses as they appear on the books and records of Holdings at the close of business on the Record Date.

THIS COURT ORDERS that accidental failure or omission by the Applicant to give notice of the Meeting or to distribute the Meeting Materials or Court Materials to any person entitled by this Interim Order to receive notice, or any failure or omission to give such notice as a result of events beyond the reasonable control of the Applicant, or the non-receipt of such notice shall, subject to further order of this Court, not constitute a breach of this Interim Order nor shall it invalidate any resolution passed or proceedings taken at the Meeting. If any such failure or omission is brought to the attention of the Applicant, it shall use its best efforts to rectify it by the method and in the time

most reasonably practicable in the circumstances.

THIS COURT ORDERS that the Applicant is hereby authorized to make, with the consent of the Initial Consenting Noteholders, such amendments, revisions or supplements to the Meeting Materials and Court Materials (subject to paragraphs 9 and 10 in the case of any amendments, revisions or supplements to the Recapitalization Plan), as the Applicant may determine in accordance with the terms of the Arrangement Agreement and the Recapitalization Plan ("Additional Information"), and that notice of such Additional Information may, subject to paragraph 10, above, be distributed by press release, newspaper advertisement, pre-paid ordinary mail, or by the method most reasonably practicable and expedient in the circumstances, as determined by the Applicant.

Service

THIS COURT ORDERS that distribution of the Meeting Materials and Court Materials pursuant to paragraphs 13 and 14 of this Interim Order shall constitute notice of the Meeting and good and sufficient service of the within Application upon the persons described in paragraphs 13 and 14 and that those persons are bound by any orders made on the within Application. Further, no other form of service of the Meeting Materials or the Court Materials or any portion thereof need be made, or notice given or other material served in respect of these proceedings and/or the Meeting to such persons or to any other persons, except to the extent required by paragraph 10, above.

Solicitation and Revocation of Proxies and Election Forms

THIS COURT ORDERS that Holdings and the Applicant are authorized to use the proxies and Election Forms substantially in the form of the drafts accompanying the Information Circular, with such amendments and additional information as Holdings and the Applicant may determine are necessary or desirable, with the consent of the Initial Consenting Noteholders, subject to the terms of the Arrangement Agreement and the Recapitalization Plan. Holdings and the Applicant are authorized, at their expense, to solicit proxies and Election Forms, directly or through their officers, directors or employees, and through such agents or representatives as they may retain for that purpose, and by mail or such other forms of personal or electronic communication as they may determine. Holdings or the Applicant may waive, with the consent of the Initial Consenting Noteholders the time limits set out in the Information Circular for the deposit or revocation of proxies by Voting Securityholders, or Election Forms by Eligible Investors, if Holdings or the Applicant deems it advisable to do so.

THIS COURT ORDERS that Voting Securityholders shall be entitled to revoke their proxies in accordance with section 148(4) of the CBCA (except as the procedures of that section are varied by this paragraph) provided that any instruments in writing delivered pursuant to s.148(4)(a)(i) of the CBCA: (a) may be deposited at the registered office of the Applicant or with the transfer agent of the Applicant as set out in the Information Circular; and (b) any such instruments must be received by the Applicant or its transfer agent not later than 5:00 p.m. two business days immediately

preceding the Meeting (or any adjournment or postponement thereof).

Voting

THIS COURT ORDERS that the only persons entitled to vote in person or by proxy on the Arrangement Resolution, or such other business as may be properly brought before the Meeting, shall be registered holders as at the Record Date of:

the First Lien Notes (or their proxyholders);

the Unsecured Senior Notes (or their proxyholders);

the Unsecured Pari Passu Notes (or their proxyholders); and

the Unsecured Subordinated Notes (or their proxyholders).

Illegible votes, spoiled votes, defective votes and abstentions shall be deemed to be votes not cast. Proxies that are properly signed and dated but which do not contain voting instructions shall be voted in favour of the Arrangement Resolution.

THIS COURT ORDERS that votes shall be taken at the Meeting on the basis of one vote for each dollar of Voting Claim of the First Lien Notes, Unsecured Senior Notes, Unsecured Pari Passu Notes or Unsecured Subordinated Notes, calculated using the principal amount plus accrued and unpaid interest showing on the records of Holdings or Wireless, as applicable, as at the Record Date on each First Lien Note, Unsecured Senior Note, Unsecured Pari Passu Note and Unsecured Subordinated Note, respectively, and that, unless otherwise ordered by this Court, the Arrangement Resolution can only be passed, with or without variation by:

the registered holders of the First Lien Notes, who collectively represent at least two-thirds in value of the Voting Claims of all First Lien Noteholders who actually vote on the Arrangement (in person or by proxy) at the Meeting; and

the registered holders of the Unsecured Notes who collectively represent at least two-thirds in value of the Voting Claims of all Unsecured Noteholders who actually vote (in person or by proxy) at the Meeting.

Such votes shall be sufficient, but not necessary unless otherwise ordered by this Court, to authorize the Applicant to do all such acts and things as may be necessary or desirable to give effect to the Recapitalization Plan on a basis consistent with what is provided for in the Information Circular without the necessity of any further approval by the Voting Securityholders, subject only to final approval of the Recapitalization Plan by this Honourable Court.

THIS COURT ORDERS that, for purposes of determining whether or not the Recapitalization Plan has received the affirmative vote of the Required Majority of the Unsecured Noteholder Class and the First Lien Noteholder Class, the tabulation agent for the Creditor's Meeting will separately record the vote of each Voting Securityholder and in respect of the Unsecured Noteholder Class shall first record the vote of the Unsecured Senior Noteholders, then the votes of the Unsecured Pari Passu Noteholders, and then the votes of the Unsecured Subordinated Noteholders.

THIS COURT ORDERS that regardless of whether or not the Arrangement Resolution is approved by the Required Majority of First Lien Noteholders, Wireless and the First Lien Indenture Trustee may, with the consent of the Supporting First Lien Noteholders, apply the votes taken in respect of the First Lien Notes at the Meeting to any amendment of the First Lien Indenture that is consistent with the matters contained in the First Lien Supplemental Indenture, provided that any such amendment is conducted pursuant to and in accordance with the amendment provisions of the First Lien Indenture.

Early Consent Deadline and Election Date.

THIS COURT ORDERS that the Early Consent Deadline shall be May 14, 2013 (or such later date as the Applicant, Holdings and the Initial Consenting Noteholders may agree).

THIS COURT ORDERS that the Election Date shall be May 14, 2013 (or such later date as the Applicant, Holdings and the Initial Consenting Noteholders may agree).

THIS COURT ORDERS that compliance with the notice requirement of paragraphs 13 and 14 shall constitute sufficient notice of the Early Consent Deadline and the Election Date.

Alternative CCAA Recapitalization Plan

THIS COURT ORDERS that, pursuant to a further order of this Court, votes cast at the Meeting in respect of the Recapitalization Plan may count as votes cast in respect of an Alternative CCAA Plan, on the terms and conditions set forth in the Recapitalization Plan.

Hearing of Application for Approval of the Recapitalization Plan

THIS COURT ORDERS that following the Meeting, and in accordance with the terms of the arrangement agreement among the members of the Mobilicity Group attached as Schedule D to the Information Circular, the Applicant may, but shall not be required to, apply to this Court for final approval of the Recapitalization Plan on a date to be determined by the Applicant and this Court.

THIS COURT ORDERS that distribution of the Notice of Application and the Information Circular (including the Interim Order), when sent in accordance with paragraphs 13 and 14 shall constitute good and sufficient service of the Notice of Application and this Interim Order and no other form of service need be effected and no other material need be served unless a Notice of Appearance is

served in accordance with paragraph 30.

THIS COURT ORDERS that any Notice of Appearance served in response to the Notice of Application shall be served on the solicitors for the Applicant as soon as reasonably practicable, and, in any event, no less than five (5) days before the date set by the Court for the hearing of this Application at the following addresses:

NORTON ROSE CANADA LLP
TD Waterhouse Tower
Suite 2300
Toronto-Dominion Centre
79 Wellington Street West
P.O. Box 128
Toronto, Ontario M5K 1H1

Attention: Orestes Pasparakis and Marc Kestenberg

THIS COURT ORDERS that, subject to further order of this Court, the only persons entitled to appear and be heard at the hearing of the within Application shall be:

the members of the Mobilicity Group;

the Director;

legal counsel to the Initial Consenting Noteholders; and

any person who has filed and served a Notice of Appearance herein in accordance with the Notice of Application, this Interim Order and the Rules of Civil Procedure.

THIS COURT ORDERS that any materials to be filed by the Mobilicity Group in support of the within Application for final approval of the Recapitalization Plan may be filed up to one day prior to the hearing of the Application without further order of this Court.

THIS COURT ORDERS that in the event the within Application for final approval does not proceed on the date set by the Court for the hearing of this Application, and is adjourned, only those persons who served and filed a Notice of Appearance in accordance with paragraph 30 shall be entitled to be given notice of the adjourned date.

No Right to Declare Default

THIS COURT ORDERS that, (1) unless leave of this Court is granted on five days' notice to the Applicant, from 12:01 am on the date of this Interim Order until and including the earlier of June

30, 2013 and the Effective Date: no holder of the First Lien Notes, Existing Second Lien Notes, the Unsecured Senior Notes, the Unsecured Pari Passu Notes or the Unsecured Subordinated Notes, nor any of the following material suppliers to the Mobilicity Group: Ericsson Canada Inc.; Ingram Micro Inc., AMDOCS Canadian Managed Services, Inc., and Research In Motion Limited, as well as their affiliates, successors and permitted assigns (each a "Material Supplier") shall have any rights to terminate, accelerate, amend or declare in default any contract, agreement, instrument or other document to which any member of the Mobilicity Group are a party due to any member of the Mobilicity Group being a party to this proceeding or having made an application to this Court pursuant to section 192 of the CBCA or taking any steps in furtherance thereof; and (2) on consent of the holders of the Existing Second Lien Notes, all holders of the Existing Second Lien Notes are hereby stayed from enforcing the payment or security in respect of the Existing Second Lien Notes.

THIS COURT ORDERS that the Mobilicity Group shall provide a copy of this Interim Order to each Material Supplier within 5 business days of the date of this Interim Order.

Precedence

THIS COURT ORDERS that, to the extent of any inconsistency or discrepancy between this Interim Order and the terms of any instrument creating, governing or collateral to the First Lien Notes, Unsecured Senior Notes, the Unsecured Pari Passu Notes and the Unsecured Subordinated Notes, or the articles or by-laws or any shareholders agreement of any member of the Mobilicity Group, this Interim Order shall govern. For greater certainty nothing in this Order shall affect the substantive rights of any First Lien Noteholder.

Extra-Territorial Assistance

THIS COURT seeks and requests the aid and recognition of any court or any judicial, regulatory or administrative body in any province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States or other country to act in aid of and to assist this Court in carrying out the terms of this Interim Order.

Variance

THIS COURT ORDERS that the Applicant shall be entitled to seek leave to vary this Interim Order upon such terms and upon the giving of such notice as this Court may direct.

THIS COURT ORDERS that the requirement for service of the Notice of Motion is hereby dispensed with.

General

1. THIS COURT ORDERS that any interested party (including the Applicant) may apply

to this Court to vary or amend this Order (a) on not less than four (4) days notice to the Applicant, counsel to the Initial Consenting Noteholders and any other party or parties likely to be affected by the Order sought; and (b) within seven (7) days of the distribution of the Meeting Materials as set out in Paragraphs 13 and 14, or upon such other notice, if any, as this Court may order.

---- End of Request ----
Download Request: Current Document: 1
Time Of Request: Monday, June 13, 2016 18:10:59