

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF 8440522 CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC., AND
DATA & AUDIO-VISUAL ENTERPRISES HOLDINGS INC.

Applicants

**AFFIDAVIT OF WILLIAM E. AZIZ
(sworn February 19, 2014)**

I, **WILLIAM E. AZIZ**, of the Town of Oakville, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President of BlueTree Advisors II Inc. ("**BlueTree**"), which has been retained by Data & Audio-Visual Enterprises Holdings Inc. ("**Holdings**") to provide my services to Holdings and its affiliates¹ (collectively, with Holdings, the "**Mobilicity Group**") as Chief Restructuring Officer of the Mobilicity Group. I am a director of each of the Mobilicity Group entities. BlueTree was retained pursuant to an Engagement Letter dated April 24, 2013.
2. My engagement was ratified and confirmed by Order of this Court on September 30, 2013 (the "**Initial Order**"), a copy of which is attached as **Exhibit "A"** to this Affidavit.
3. I have been overseeing the restructuring efforts of the Mobilicity Group since April 24, 2013 and, as such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have spoken with certain of the directors, officers, advisors and/or employees of the Mobilicity Group, as necessary, and, where I have relied upon information from such discussions, I believe such information to be true.
4. This Affidavit is sworn in support of a motion by the Mobilicity Group to extend the Stay Period, as such term is defined in the Initial Order, as amended by orders of this Court dated

¹The affiliates of Holdings are 8440522 Canada Inc. and Data & Audio-Visual Enterprises Wireless Inc.

October 24, 2013 and December 19, 2013, from February 26, 2014 until March 31, 2014 (the "Third Stay Extension").

Procedural Background

5. On December 19, 2013, the Applicants sought and obtained an Order extending the Stay Period until February 26, 2014 (the "Second Stay Extension Order"). A copy of the Second Stay Extension Order is attached as **Exhibit "B"** to this Affidavit.

6. The Applicants now seek the Third Stay Extension.

7. The main purpose of the Third Stay Extension is to provide the Applicants with additional time to advance their restructuring efforts, including pursuant to the sale process that was approved by this Court on November 13, 2013 (the "Sale Process").

Operations since the previous extension of the Stay Period

8. Since the issuance of the Second Stay Extension Order, the Applicants have focussed their efforts on maintaining the stability of their business and advancing the restructuring alternatives available to them, including as a result of the Sale Process. The status of the Sale Process and the efforts of the Applicants in pursuing a restructuring transaction are discussed in greater detail below.

9. The Applicants currently have over 166,000 customers.² Mobilicity remains focussed on providing the best available services to its customers. The continued ongoing customer level has resulted in better than forecasted revenues for the Applicants.

10. The Applicants terminated the employment of certain employees whose services were no longer required by the Applicants and provided such employees with working notice. The Applicants are otherwise experiencing a higher than anticipated employee retention level.

11. The key employee retention payments previously approved by this Court pursuant to the Initial Order will become payable on February 28, 2014. The Applicants have identified five key employees who, for the reasons set out in paragraphs 164 to 166 of my affidavit sworn September 29, 2013 in these proceedings, are critical to the management of the business going-forward and have offered these employees retention payments totalling approximately

²This figure would exceed 190,000 if inactive subscribers were included.

\$140,000 (the "**Continuing KERP Amounts**") for the period post-February 28, 2014. Such Continuing KERP Amounts would be payable on the completion of a restructuring transaction or earlier at the discretion of the Chief Restructuring Officer. The Applicants propose that these payments be secured by the KERP Charge (as such term is defined in the Initial Order). A copy of my September 29, 2013 affidavit (without attachments) is attached as **Exhibit "C"** hereto.

12. Two of the directors of the Applicants have resigned since the Second Stay Extension Order. The resignations were made based on other commitments of such directors. There are currently four remaining directors of the Applicants.

13. The Applicants continue to receive the services they require from all of their major suppliers and the payment arrangements that were previously negotiated continue, uninterrupted.

14. A dispute between one of the Applicants' service suppliers, Amdocs Software Systems Limited ("**Amdocs**"), and the Applicants with respect to certain contractual arrangements with Amdocs and its affiliate remains unresolved.

15. Since the Stay Extension Order, the Applicants have operated within their cash flow forecast (as last filed with the Court under cover of the Monitor's third report dated December 13, 2013) and honoured their post-filing commitments as they came due.

16. The Applicants' cash flow has been improved as a result of savings from forecast in wages and benefits through attrition, reduced legal fees, a recovery on PST paid on commissions in British Columbia in prior periods due to the tax change-over, and reduced December commissions as a result of the fact that the majority of new subscriber activations were on less costly promotional plans. The remaining improvement is primarily from lower spending on general expenses, service delivery, and professional fees.

DIP Amending Agreement

17. The Applicants negotiated an amending agreement (the "**DIP Amending Agreement**") extending the maturity date of their Court-approved debtor-in-possession financing (the "**DIP Loan Agreement**"), which will now mature on **March 31, 2014**. The availability of funds under the DIP Loan Agreement continues to be subject to the satisfaction of certain conditions. Pursuant to the DIP Amending Agreement, the Applicants are afforded additional time to meet

such conditions. A redacted copy of the DIP Amending Agreement is attached as **Exhibit "D"** to this Affidavit.

18. The Applicants believe that the support of the lenders under the DIP Loan Agreement (the "**DIP Lenders**") has played and continues to play an important role in the Applicants' ability to maintain operational stability during these proceedings.

Sale Process

19. On November 13, 2013, this Court issued an Order approving the Sale Process (the "**Sale Process Order**"). A copy of the Sale Process Order is attached as **Exhibit "E"** to this Affidavit.

20. The Sale Process is an ongoing competitive process that is being conducted pursuant to the Sale Process Order under the supervision of the Monitor and pursuant to which the market was canvassed for a variety of options and alternatives. The Sale Process has provided an equal opportunity to all those interested in making a bid for the Applicants or their assets.

21. Since the Second Stay Extension Order, the Applicants, their financial advisor, Canaccord Genuity ("**CG**") and the Monitor have held meetings and had discussions with several of the bidders who have submitted bids pursuant to the Sale Process. The timing and status of those meetings and discussions were impacted by the timing of the government's 700 MHz spectrum auction (the "**700 Spectrum Auction**"), which began on January 14, 2014. On February 18, 2014, Industry Canada announced that the 700 Spectrum Auction results will be announced at 5 p.m. on February 19, 2014.

22. The Applicants have elected to extend the Sale Process in order for the Applicants and any qualified bidders in the Sale Process to have the benefit of actual knowledge of the results of the 700 Spectrum Auction. The Applicants believe that the actual results of the 700 Spectrum Auction will assist the Applicants in finalizing their Sale Process and completing a transaction in the short term.

23. Further, the expiry as of February 12, 2014 of the five year moratorium on transfers of spectrum licences to incumbents, which was imposed as a condition of the Applicants' spectrum licences, is another factor in connection with the advancement of the discussions and bids

pursuant to the Sale Process.

24. Since the Second Stay Extension Order and in conjunction with the Sale Process, the Applicants have obtained an order from this Court establishing the procedure by which the Applicants can bring a motion to the Court for the transfer of the Applicants' spectrum licences pursuant to Section 11.3 of the CCAA. The Applicants continue to be in communication with Industry Canada in respect of the ongoing Sale Process.

25. The Mobilicity Group's ongoing goal remains to advance a restructuring transaction which has the support of all its stakeholders.

Request for a Further Stay Extension

26. The Applicants require more time to conclude their discussions with interested parties, and negotiate transaction documents with the successful bidder or bidders, as appropriate. As such, the Applicants are requesting an extension of the Stay Period to and including March 31, 2014.

27. The Applicants, with the assistance of the Monitor, have prepared updated cash flow projections for the period between the week ending February 8, 2014 and the week ending May 9, 2014 (the "**Updated Cash Flow Statement**"), which cover the period of the Third Stay Extension. I understand that the Updated Cash Flow Statement will be attached as an appendix to the Monitor's fourth report to be served in connection with this motion.

28. The Updated Cash Flow Statement shows that the Applicants have sufficient resources during the Third Stay Extension period, to meet their post-filing obligations during that same period.

29. Since the issuance of the Second Stay Extension Order, the Applicants continue to work in good faith and with due diligence in the pursuit of their restructuring activities, including the pursuit of one or more value-maximizing transactions for the business of the Applicants that would benefit the Applicants' stakeholders.

30. I am advised that the Monitor, the Ad Hoc Committee of Noteholders, the DIP Lenders, the Bridge Lenders and QCP CW S.A.R.L. (as those terms are referred to herein or in the Initial Order) all support the Third Stay Extension.

SWORN BEFORE ME at the City of Toronto, Province of Ontario, on February 19, 2014.



Commissioner for Taking Affidavits



WILLIAM E. AZIZ

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 8445022
CANADA INC., DATA & AUDIO-VISUAL ENTERPRISES WIRELESS INC. AND DATA &
AUDIO-VISUAL ENTERPRISES HOLDINGS INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF WILLIAM E. AZIZ
(Sworn February 19, 2014)**

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