

NextWave Wireless Inc.  
Form 10-Q  
November 05, 2012  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, DC 20549**

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended September 29, 2012**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the transition period from            to**

**Commission file number 001-33226**

**NEXTWAVE WIRELESS INC.**

**(Exact name of registrant as specified in its charter)**

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**20-5361360**  
(IRS Employer  
Identification No.)

**12264 El Camino Real, Suite 305, San Diego, California**  
(Address of principal executive offices)

**92130**  
(Zip Code)

**(619) 573-1570**

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company   
Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of October 29, 2012, there were 24,938,132 shares of the registrant's common stock outstanding.

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**Table of Contents****PART I. FINANCIAL INFORMATION****ITEM 1. Financial Statements****NEXTWAVE WIRELESS INC.****CONDENSED CONSOLIDATED BALANCE SHEETS**

(in thousands, except par value data)

(unaudited)

|   | September 29,<br>2012 | December 31,<br>2011 |
|---|-----------------------|----------------------|
| <b>ASSETS</b>   |                       |                      |
| Current assets:   |                       |                      |
| Cash and cash equivalents   | \$ 5,863              | \$ 11,087            |
| Restricted cash   | 1,696                 | 1,047                |
| Marketable securities   |                       | 10,000               |
| Prepaid expenses and other current assets   | 248                   | 827                  |
| Current assets of discontinued operations   | 4,162                 | 3,511                |
| <br>  |                       |                      |
| Total current assets  | 11,969                | 26,472               |
| Wireless spectrum licenses, net   | 431,397               | 435,522              |
| Property and equipment, net   | 721                   | 1,313                |
| Other assets  | 50                    | 362                  |
| <br>  |                       |                      |
| Total assets  | \$ 444,137            | \$ 463,669           |
| <b>LIABILITIES AND STOCKHOLDERS DEFICIT</b>   |                       |                      |
| Current liabilities:  |                       |                      |
| Accounts payable  | \$ 250                | \$ 5                 |
| Accrued expenses  | 3,959                 | 2,328                |
| Current portion of long-term obligations  | 1,148,434             | 142,019              |
| Other current liabilities   | 9                     | 10                   |
| Current liabilities of discontinued operations  | 725                   | 172                  |
| <br>  |                       |                      |
| Total current liabilities   | 1,153,377             | 144,534              |
| Deferred income tax liabilities   | 83,937                | 83,334               |
| Long-term obligations, net of current portion   | 15,489                | 896,568              |
| <br>  |                       |                      |
| Commitments and contingencies   |                       |                      |
| Stockholders' deficit:  |                       |                      |
| Preferred stock, \$0.001 par value; 25,000 shares authorized; 355 shares designated as Series A Senior Convertible Preferred Stock; no other shares issued or outstanding |                       |                      |
| Common stock, \$0.007 par value; 57,143 shares authorized; 24,938 shares issued and outstanding at September 29, 2012 and December 31, 2011                               | 175                   | 175                  |
| Additional paid-in-capital  | 888,800               | 888,505              |
| Accumulated other comprehensive income  | 5,486                 | 21,805               |
| Accumulated deficit   | (1,703,127)           | (1,571,252)          |

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|   |            |            |
|---|------------|------------|
| Total stockholders' deficit                 | (808,666)  | (660,767)  |
| Total liabilities and stockholders' deficit | \$ 444,137 | \$ 463,669 |

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

**Table of Contents****NEXTWAVE WIRELESS INC.****CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND OTHER COMPREHENSIVE LOSS****(in thousands, except per share data)****(unaudited)**

|  | <b>Three Months Ended</b>     |                            | <b>Nine Months Ended</b>      |                            |
|--|-------------------------------|----------------------------|-------------------------------|----------------------------|
|  | <b>September 29,<br/>2012</b> | <b>October 1,<br/>2011</b> | <b>September 29,<br/>2012</b> | <b>October 1,<br/>2011</b> |
| <b>Operating expenses:</b>   |                               |                            |                               |                            |
| General and administrative   | \$ 11,056                     | \$ 5,006                   | \$ 21,739                     | \$ 17,281                  |
| Restructuring credit   |                               |                            |                               | (1,076)                    |
| Total operating expenses   | 11,056                        | 5,006                      | 21,739                        | 16,205                     |
| Net gains on sales of wireless spectrum licenses   | 1                             | 2                          | 101                           | 255                        |
| Loss from operations   | (11,055)                      | (5,004)                    | (21,638)                      | (15,950)                   |
| <b>Other income (expense):</b>   |                               |                            |                               |                            |
| Interest income  | 6                             | 13                         | 32                            | 42                         |
| Interest expense   | (44,773)                      | (64,762)                   | (129,441)                     | (185,007)                  |
| Other income (expense), net  | (1)                           | (7)                        | (5)                           | 1,245                      |
| Total other expense, net   | (44,768)                      | (64,756)                   | (129,414)                     | (183,720)                  |
| Loss from continuing operations before income taxes  | (55,823)                      | (69,760)                   | (151,052)                     | (199,670)                  |
| Income tax benefit   | 217                           | 262                        | 614                           | 2,082                      |
| Net loss from continuing operations  | (55,606)                      | (69,498)                   | (150,438)                     | (197,588)                  |
| <b>Income from discontinued operations before income taxes, net of gains (losses) on divestitures of discontinued operations of \$0, \$(1), \$19,862 and \$2,119, respectively</b> |                               |                            |                               |                            |
| Income tax provision   | 16                            | 66                         | 20,029                        | 2,740                      |
| Income tax provision   | (6)                           | (24)                       | (1,466)                       | (1,000)                    |
| Net income from discontinued operations  | 10                            | 42                         | 18,563                        | 1,740                      |
| Net loss   | \$ (55,596)                   | \$ (69,456)                | \$ (131,875)                  | \$ (195,848)               |
| <b>Other comprehensive loss:</b>   |                               |                            |                               |                            |
| Net loss   | \$ (55,596)                   | \$ (69,456)                | \$ (131,875)                  | \$ (195,848)               |
| Foreign currency translation adjustment transferred to earnings upon substantial liquidation of foreign entities   |                               |                            | (17,578)                      | (1,305)                    |
| Foreign currency translation adjustment  | 1,451                         | (2,653)                    | 1,259                         | 1,325                      |
| Total other comprehensive loss   | (54,145)                      | (72,109)                   | (148,194)                     | (195,828)                  |

**Amounts attributed to net income (loss) per common share:**

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|   |                    |                    |                     |                     |
|---|--------------------|--------------------|---------------------|---------------------|
| Net loss from continuing operations                   | \$ (55,606)        | \$ (69,498)        | \$ (150,438)        | \$ (197,588)        |
| Net income from discontinued operations               | 10                 | 42                 | 18,563              | 1,740               |
| <b>Net loss</b>                                       | <b>\$ (55,596)</b> | <b>\$ (69,456)</b> | <b>\$ (131,875)</b> | <b>\$ (195,848)</b> |
|   |                    |                    |                     |                     |
| Net income (loss) per common share basic and diluted  |                    |                    |                     |                     |
| Continuing operations                                 | \$ (2.30)          | \$ (2.89)          | \$ (6.24)           | \$ (8.21)           |
| Discontinued operations                               |                    |                    | 0.77                | 0.07                |
| <b>Net loss</b>                                       | <b>\$ (2.30)</b>   | <b>\$ (2.89)</b>   | <b>\$ (5.47)</b>    | <b>\$ (8.14)</b>    |
|   |                    |                    |                     |                     |
| Weighted-average shares used in per share calculation | 24,127             | 24,060             | 24,107              | 24,060              |

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

**Table of Contents****NEXTWAVE WIRELESS INC.****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS****(in thousands)****(unaudited)**

|   | <b>Nine Months Ended</b>      |                            |
|---|-------------------------------|----------------------------|
|   | <b>September 29,<br/>2012</b> | <b>October 1,<br/>2011</b> |
| <b>OPERATING ACTIVITIES</b>   |                               |                            |
| Net loss  | \$ (131,875)                  | \$ (195,848)               |
| Net income from discontinued operations   | 18,563                        | 1,740                      |
| Net loss from continuing operations   | (150,438)                     | (197,588)                  |
| Adjustments to reconcile loss from continuing operations to net cash used in operating activities of continuing operations: |                               |                            |
| Amortization of intangible assets   | 5,574                         | 5,709                      |
| Depreciation  | 592                           | 656                        |
| Non-cash share-based compensation   | 295                           | 625                        |
| Paid-in-kind interest   | 124,080                       | 98,448                     |
| Amortization of deferred financing costs and discounts  | 5,342                         | 86,552                     |
| Gains on sales of wireless spectrum licenses  | (101)                         | (255)                      |
| Gains from changes in estimated fair values of embedded derivatives   |                               | (1,261)                    |
| Deferred income tax benefit   | (607)                         | (1,082)                    |
| Other non-cash adjustments  | 3                             | (1,044)                    |
| Changes in operating assets and liabilities:  |                               |                            |
| Prepaid expenses and other current assets   | 572                           | 551                        |
| Other assets  | 290                           | (389)                      |
| Accounts payable and accrued liabilities  | 1,872                         | (2,610)                    |
| Net cash used in operating activities of continuing operations  | (12,526)                      | (11,688)                   |
| <b>INVESTING ACTIVITIES</b>   |                               |                            |
| Proceeds from the maturity of investment securities   | 20,210                        |                            |
| Purchase of held-to-maturity investment securities  | (10,191)                      | (15,000)                   |
| Proceeds from the sale of wireless spectrum licenses, net of selling costs  | 278                           | 255                        |
| Net cash provided by (used in) investing activities of continuing operations  | 10,297                        | (14,745)                   |
| <b>FINANCING ACTIVITIES</b>   |                               |                            |
| Payments on long-term obligations   | (4,080)                       | (10,137)                   |
| Payments to restricted cash account used to redeem long-term obligations  | (647)                         |                            |
| Net cash used in financing activities of continuing operations  | (4,727)                       | (10,137)                   |
| Cash provided (used) by discontinued operations:  |                               |                            |
| Net cash provided (used) by operating activities of discontinued operations   | 193                           | (906)                      |
| Net cash provided by investing activities of discontinued operations  | 2,213                         | 3,654                      |
| Net cash provided by discontinued operations  | 2,406                         | 2,748                      |



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|  |          |          |
|--|----------|----------|
| Effect of foreign currency exchange rate changes on cash                 | (18)     | 3        |
| Net decrease in cash and cash equivalents                                | (4,568)  | (33,819) |
| Cash and cash equivalents, beginning of period                           | 11,092   | 42,598   |
| Cash and cash equivalents, end of period                                 | 6,524    | 8,779    |
| Less cash and cash equivalents of discontinued operations, end of period | (661)    | (40)     |
| Cash and cash equivalents of continuing operations, end of period        | \$ 5,863 | \$ 8,739 |

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

**Table of Contents****NEXTWAVE WIRELESS INC.****NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS****1. Basis of Presentation and Significant Accounting Policies*****Financial Statement Preparation***

The condensed consolidated financial statements of NextWave Wireless Inc. (together with its subsidiaries, the Company, NextWave, we, our ) are unaudited. We have prepared the condensed consolidated financial statements in accordance with the rules and regulations of the United States Securities and Exchange Commission ( SEC ), and, therefore, certain information and disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. In the opinion of management, the accompanying condensed consolidated financial statements for the periods presented reflect all adjustments necessary to fairly state our financial position, results of operations and cash flows, including adjustments related to asset impairment write-offs and restructuring-related credits. These condensed consolidated financial statements should be read in conjunction with our audited financial statements for the year ended December 31, 2011, from which the balance sheet data was derived, included in our Annual Report on Form 10-K filed with the SEC on March 12, 2012.

***Proposed Acquisition by AT&T***

On August 1, 2012, we entered into an Agreement and Plan of Merger (the Merger Agreement ) with AT&T Inc., a Delaware corporation ( AT&T ) and Rodeo Acquisition Sub Inc., a Delaware corporation and a direct wholly-owned subsidiary of AT&T ( Merger Sub ). Under the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will be merged with and into the Company, with the Company continuing as the surviving corporation and a direct wholly-owned subsidiary of AT&T (the Merger ).

The Merger Agreement provides that AT&T will acquire all of the outstanding common shares of NextWave for \$1.00 per share plus a non-transferrable contingent payment right representing a pro rata interest in an amount of up to \$25 million in the residual balance of a \$50 million escrow fund to be initially funded with (i) a \$25 million payment by AT&T pursuant to the terms of the Merger Agreement and (ii) \$25 million of the price to be paid by AT&T for the NextWave Third Lien Notes (as defined below) pursuant to the terms of a note purchase agreement entered into between AT&T and the holders of NextWave Third Lien Notes. The escrow fund and the contingent payment rights are subject to reduction (including to \$0) to satisfy indemnification rights held by AT&T in respect of losses resulting from, among other things, breaches of representations and warranties, certain pre-closing liabilities, balance sheet adjustments and other items described in the Merger Agreement and the purchase agreement for the NextWave Third Lien Notes, and to pay fees to be incurred under the related contingent payment rights agreement and escrow agreement.

Also on August 1, 2012, AT&T entered into note purchase agreements with each of the holders of our secured notes (collectively, the Notes ). Pursuant to the note purchase agreements, immediately prior to the consummation of the Merger, AT&T will purchase our Senior Notes (as defined below), Second Lien Notes (as defined below) and NextWave Third Lien Notes (as defined below). AT&T will purchase our Senior Notes and Second Lien Notes for the aggregate principal amount of such notes plus accrued interest at the time of such purchase. AT&T will purchase the NextWave Third Lien Notes for a cash amount equal to \$600 million, less the amounts paid to purchase the Senior Notes and Second Lien Notes, less the approximately \$25 million cash consideration to be paid by AT&T at closing of the Merger pursuant to the terms of the Merger Agreement to holders of the Company's common stock, stock options and warrants, and the \$25 million to be deposited into the \$50 million escrow fund in respect of the contingent payment rights at closing pursuant to the Merger Agreement and subject to a \$25 million escrow hold-back to secure post-closing indemnification rights held by AT&T and other deductions pursuant to the note purchase agreement for the NextWave Third Lien Notes. The amount of cash to be paid at closing in respect of the NextWave Third Lien Notes will also be subject to reduction for closing date liabilities of NextWave, including certain tax amounts, and amounts necessary to repay any outstanding Senior Incremental Notes (as defined below). Pursuant to the Call Agreement (as defined below), immediately prior to the consummation of the Merger, the HoldCo Third Lien Notes (as defined below), will be redeemed for 100% of the equity in NextWave HoldCo, the direct or indirect parent of our subsidiaries that hold certain of our assets and liabilities, other than our U.S. WCS and AWS spectrum assets, including our Canadian WCS spectrum and 2.5 MHz EBS/BRS spectrum assets.

In connection with the Merger Agreement, on August 1, 2012, the Company and its wholly owned subsidiary NextWave Wireless LLC, and certain subsidiary guarantors entered into a Forbearance Agreement (the Forbearance Agreement ) with the holders of the Notes. Pursuant to the Forbearance Agreement, each holder has agreed, and directed The Bank of New York Mellon, as collateral agent, to temporarily forbear from exercising their respective rights and remedies in connection with potential defaults and events of default that may occur during the forbearance

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period. The forbearance period will terminate on the earliest to occur of the effective time of the Merger, sixty days after the date of any termination of the Merger Agreement and January 31, 2014.

The Merger Agreement will terminate automatically if the Merger has not occurred on or prior to July 31, 2013 (the Termination Date ). The Termination Date may be extended for up to two three-month periods at the option of AT&T if requisite regulatory approvals have not been obtained. In addition, either the Company or AT&T can terminate the Merger Agreement under specified circumstances. The Merger Agreement also provides that, upon termination of the Merger Agreement under specified circumstances, NextWave, or an alternative acquiror of NextWave will pay AT&T a termination payment of \$5 million.

The Merger and the transactions contemplated thereby were unanimously approved by the Independent Committee of NextWave s Board of Directors and NextWave s Board of Directors.

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The transactions contemplated by the Merger Agreement are subject to closing conditions, including the approval of NextWave's stockholders of record as of September 4, 2012, which was obtained by the Company on October 2, 2012, and regulatory approvals, including approval of the FCC.

***August 2012 Debt Modification and Noteholder Representative Call Right***

As required pursuant to the Merger Agreement, we entered into agreements with the holders of our Notes to amend and restate the Notes and amended certain documents ancillary to the Notes on August 16, 2012. Our Old Third Lien Notes were amended and restated to be no longer convertible into shares of common stock of the Company and were split into two series whereby certain of our Old Third Lien Notes remain direct obligations of the Company and the remaining principal balance of our Old Third Lien Notes became the direct obligations of NextWave HoldCo LLC, a new subsidiary that we formed on August 8, 2012, under the laws of the State of Delaware ( NextWave HoldCo ). Specifically, \$318.6 million in aggregate principal, plus accrued and unpaid interest through August 15, 2012 of \$6.4 million of the Company's outstanding obligations under the Old Third Lien Notes remained the Company's direct obligations ( NextWave Third Lien Notes ) and the remaining principal balance of the Old Third Lien Notes, consisting of \$428.3 million in aggregate principal, plus accrued and unpaid interest through August 15, 2012 of \$8.6 million, became the direct obligations of NextWave HoldCo ( HoldCo Third Lien Notes ). We provided a third priority guarantee of NextWave HoldCo's obligations under the HoldCo Third Lien Notes. The terms of the HoldCo Third Lien Notes contain restrictive covenants relating to, among other things, the sale of assets transferred to NextWave HoldCo as part of our internal restructuring transactions contemplated by the Merger Agreement.

Our amended and restated Senior Notes provide for the issuance of up to \$15 million of additional notes for payment of expenses incurred in the ordinary course of operations or in connection with payments to be made in connection with the Merger (the Senior Incremental Notes ). The amended and restated Senior Notes accrue interest at an annual rate equal to 15% per annum, except that the Senior Incremental Notes will accrue interest at an annual rate not to exceed 10% per annum.

Our amended and restated Senior Notes contain representations and warranties, affirmative and negative covenants and events of default that are substantially the same as the corresponding provisions of our Senior Notes prior to their amendment and restatement. In addition, the restrictive covenants of the amended and restated Senior Notes were modified to mirror the additional restrictive covenants of the NextWave Third Lien Notes and the HoldCo Third Lien Notes along with an additional restrictive covenant prohibiting the Company from refinancing, modifying or amending the terms of the amended and restated Second Lien Notes, the NextWave Third Lien Notes or the HoldCo Third Lien Notes except in accordance with the terms of that certain Amended and Restated Intercreditor Agreement dated as of August 16, 2012 (the Intercreditor Agreement ), among NextWave LLC, the Company, NextWave HoldCo, their respective subsidiaries party thereto, the holders of our amended and restated senior notes, Wilmington Trust, National Association, as collateral agent for the holders of our amended and restated senior notes, the holders of our amended and restated subordinated notes, and Wilmington Trust, National Association, as collateral agent for the holders of our amended and restated subordinated notes, the holders of our NextWave Third Lien Notes and the holders of the HoldCo Third Lien Notes.

Our amended and restated Second Lien Notes accrue interest at an annual rate equal to 15% per annum. The amended and restated Second Lien Notes contain representations and warranties, affirmative and negative covenants and events of default that are substantially the same as the corresponding provisions of our Second Lien Notes prior to their amendment and restatement. In addition, the restrictive covenants of the amended and restated subordinated notes were modified to mirror the additional restrictive covenants of the NextWave Third Lien Notes and the HoldCo Third Lien Notes along with an additional restrictive covenant prohibiting the Company from refinancing, modifying or amending the terms of the amended and restated Senior Notes, the NextWave Third Lien Notes or the HoldCo Third Lien Notes except in accordance with the terms of the Intercreditor Agreement.

In connection with the amendment and restatement of our Notes, NextWave HoldCo became the direct or indirect parent of our subsidiaries that hold certain of our assets and liabilities, other than our U.S. WCS and AWS spectrum assets, including our Canadian WCS spectrum and 2.5 MHz EBS/BRS spectrum assets. At September 29, 2012, our U.S. WCS and AWS spectrum assets had a book value of \$336.8 million and our Canadian WCS spectrum and 2.5 MHz EBS/BRS spectrum assets had a book value of \$94.6 million.

In connection with the amended and restated Notes, NextWave LLC and NextWave HoldCo entered into a Call Option/Note Redemption Agreement (the Call Agreement ) with Wilmington Trust, National Association (the noteholder representative ). Pursuant to the Call Agreement, the noteholder representative has been issued a call right, on behalf of the holders of the HoldCo Third Lien Notes, to require that we transfer 100% of the equity of NextWave HoldCo to the holders of the HoldCo Third Lien Notes to redeem, in full, the HoldCo Third Lien Notes. The NextWave HoldCo call right will not be exercisable until receipt of any required regulatory approvals and one of the following:

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receipt of notification by AT&T that the merger will occur and conditions to closing have been satisfied or waived so long as AT&T deposits, or causes to be deposited, \$25 million into the escrow fund as required pursuant to the Merger Agreement, in which case all of the limited liability company interests of NextWave HoldCo shall be automatically transferred to the holders of the HoldCo Third Lien Notes in redemption if such notes as of immediately prior to the merger closing;

the termination of the Merger Agreement and the determination by holders of 75% or more of the HoldCo Third Lien Notes to exercise the call right, in which event the exercise of the NextWave HoldCo call right will be subject to payment of \$25 million by the holders of the HoldCo Third Lien Notes, which payment will be for the benefit of our stockholders; or

the filing by or against us, NextWave Wireless LLC or NextWave HoldCo of a voluntary or involuntary petition under the Bankruptcy Code, in which case all of the limited liability company interests of NextWave HoldCo shall be automatically transferred to the holders of the HoldCo Third Lien Notes in redemption of such notes as of immediately prior to such filing.

For the Senior Notes, Second Lien Notes, NextWave Third Lien and HoldCo Third Lien Notes, none of the terms of the notes that affect cash flows, such as maturity date, payment terms and applicable interest rates were changed. In accordance with generally accepted accounting principles, we determined that concessions were granted by the noteholders as a result of the August 2012 amendments to the Senior Notes, Second Lien Notes and Third Lien Notes, as their effective rates were less than that of the old respective notes prior to our earlier restructuring on December 14, 2011 and that troubled debt accounting provisions apply. In accordance with troubled debt restructuring accounting principles, the Senior Note, Second Lien Note and Third Lien Note amendments have been accounted for prospectively beginning August 16, 2012, with the carrying amount of the notes remaining unchanged as of this date. The new effective interest rates for all notes were determined as the discount rates that equated the present value of the future cash payments specified by the terms of the respective notes with the respective August 16, 2012 carrying amount of the notes, which resulted in effective interest rates that equated those used immediately prior to the August 2012 amendments.

All direct costs incurred to effect the August 2012 amendments and restatements were expensed as incurred.

### ***Basis of Presentation and Liquidity***

The accompanying consolidated financial statements have been prepared assuming that we will continue as a going concern. This basis of accounting contemplates the recovery of our assets and the satisfaction of our liabilities in the normal course of business. We generated net losses of \$131.9 million and \$195.8 million during the nine months ended September 29, 2012 and October 1, 2011, respectively, and have an accumulated deficit of \$1,703.1 million at September 29, 2012. We used cash from operating activities of our continuing operations of \$12.5 million and \$11.7 million during the nine months ended September 29, 2012 and October 1, 2011, respectively. Our unrestricted cash and cash equivalents included in current assets of continuing operations totaled \$5.9 million at September 29, 2012. We had a net working capital deficit of \$1,141.4 million at September 29, 2012.

We have funded our operations, business combinations, strategic investments and wireless spectrum license acquisitions primarily with the \$550.0 million in cash received in our initial capitalization in 2005, the net proceeds of \$295.0 million from our issuance of Senior Secured Notes (the Senior Notes) in 2006 and 2010, the net proceeds of \$351.1 million from our issuance of Series A Senior Convertible Preferred Stock (the Series A Preferred Stock) in 2007, which, in 2008, we exchanged for Third Lien Subordinated Secured Convertible Notes (the Old Third Lien Notes) in the aggregate principal amount of \$478.3 million, and the net proceeds of \$101.0 million from our issuance of our Senior Subordinated Secured Second Lien Notes (the Second Lien Notes) and together with the Senior Notes and the Old Third Lien Notes, the Notes) in 2008 and 2009. We did not receive any proceeds from the issuance of the Old Third Lien Notes.

As of September 29, 2012, the aggregate principal amount of our secured indebtedness was \$1,146 million. This amount includes our Senior Notes with an aggregate principal amount of \$153.4 million, our Second Lien Notes with an aggregate principal amount of \$215.7 million, our NextWave Third Lien Notes (as defined below) with an aggregate principal amount of \$331.4 million and our HoldCo Third Lien Notes (as defined below) with an aggregate principal amount of \$445.5 million. Our current cash reserves are not sufficient to meet our payment obligations under our secured notes at their current maturity dates. The Forbearance Agreement will terminate sixty days after any termination of the Merger Agreement. Upon any termination of the Forbearance Agreement, if we are unable to further extend the maturity of our secured notes, or identify and successfully implement alternative financing to repay our Notes, the holders of our Notes could proceed against the assets pledged to collateralize these obligations. These conditions raise substantial doubt about our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court. Any alternative financing and/or maturity extension of our Notes may be costly to obtain, and could involve the issuance of equity securities that could cause significant dilution to our existing stockholders and potentially limit our net operating loss carry forwards.

During 2011, we had capital expenditure needs associated with certain build-out or substantial service requirements which apply to our domestic licensed wireless spectrum, which generally must be satisfied as a condition of the license. The substantial service deadlines applicable to our

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domestic and Canadian wireless spectrum assets, and our activities to meet these requirements, are described below:

The substantial service deadline for our domestic Wireless Communication Services ( WCS ) spectrum was July 21, 2010 under the Federal Communications Commission ( FCC ) rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with its June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. On October 17, 2012, the FCC adopted revisions to the May 2010 rules, further extending the build-out deadlines for the WCS licenses to 48 and 78 months after the effective date of the new rules, which has not yet occurred. Failure to make the substantial service demonstrations by the new deadlines without seeking and obtaining an extension from the FCC would result in license forfeiture.

Educational Broadband Service ( EBS ) licensees were required to demonstrate that they are providing substantial service in their license areas by November 1, 2011. To meet the substantial service requirements for EBS spectrum, we arranged with our EBS licensees to either (a) have the EBS licensee continue to use the spectrum to provide educational services in the cases where the EBS licensee is currently providing such service or (b) provide educational services on a network that was installed by us, at our cost, either of which option was intended to deliver educational services over the spectrum in compliance with the FCC's educational safe harbor to meet the substantial service showing by the deadline. We have completed build-out activities for our EBS leases. All of the EBS licensees with whom we have leases filed substantial service showings by the deadline, which the FCC accepted.

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The substantial service deadline for Broadband Radio Service ( BRS ) spectrum was May 1, 2011. With respect to our domestic BRS spectrum, we have constructed and are operating a commercial system using the spectrum to meet the FCC substantial service requirement. The FCC accepted our substantial service showings and renewed our BRS licenses on September 20, 2011.

We also operate or hold spectrum licenses through various subsidiaries in Canada and Norway. In Canada, our 2.3 GHz licenses were subject to mid-term in-use demonstration deadlines of November 2012 and April 2013 for 59 and 24 of our licenses, respectively. On March 29, 2012, the Canadian regulatory authority, Industry Canada, granted an extension of two years, resulting in new in-use demonstration deadlines of November 2014 and April 2015. On October 18, 2012, Industry Canada released a public consultation seeking input on whether and how to extend further the in-use demonstration deadlines for the WCS licenses. In order for us to operate our Canadian spectrum under current Canadian ownership rules, we will need a Canadian-controlled partner. Changes to the Canadian ownership rules have been proposed, but not yet adopted. There can be no assurance that: 1) we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline, or 2) that the new ownership rules will enable us to develop a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of these licenses, in the absence of a further extension by Industry Canada, could result in forfeiture of the applicable licenses. At September 29, 2012, we held a total of 83 licenses in Canada. We do not have specific build-out obligations in Norway.

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***Principles of Consolidation***

Our consolidated financial statements include the assets, liabilities and operating results of our wholly-owned subsidiaries as of September 29, 2012 and October 1, 2011, and for the three and nine months then ended, respectively. All significant intercompany accounts and transactions have been eliminated in consolidation.

***Fiscal Year End***

We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal years 2012 and 2011 are 52-week years ending on December 29, 2012 and December 31, 2011, respectively. The three- and nine-month periods ending on September 29, 2012 and October 1, 2011 include 13 and 39 weeks each, respectively.



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### ***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. On an ongoing basis, we evaluate our estimates, including those related to income taxes, share-based awards, wireless spectrum licenses and other long-lived assets. Actual results could differ from those estimates.

### ***Cash and Cash Equivalents***

We consider all highly liquid investments with a remaining time to maturity of three months or less when acquired to be cash equivalents. Cash equivalents at September 29, 2012 and December 31, 2011 consisted primarily of money market funds, the carrying amounts of which approximate fair value due to the short maturities of these instruments.

### ***Restricted Cash***

Restricted cash at September 29, 2012 and December 31, 2011 primarily represents net proceeds from the sale of wireless spectrum licenses that must be used to redeem our Senior Notes. Under our amended and restated Senior Notes, we are not required to redeem our Senior Notes until the net proceeds from specified asset sales are sufficient to satisfy, in full, our Senior Notes.

### ***Marketable Securities***

At December 31, 2011 our short-term held-to-maturity marketable securities consisted of \$10.0 million in bank certificates of deposit with remaining maturities of less than one year. These securities are stated at their amortized costs which approximate their respective fair values at December 31, 2011.

### ***Accounting for Troubled Debt Restructurings***

A restructuring of a debt constitutes a troubled debt restructuring if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. A creditor is deemed to have granted a concession if the debtor's effective borrowing rate on the restructured debt, after giving effect to all the terms of the restructured debt, including any new or revised sweeteners such as new debt that is made available to us, is less than the effective borrowing rate of the old debt immediately before the restructuring or immediately before a prior restructuring if one has occurred within the last year.

If a restructuring of debt constitutes a troubled debt restructuring, the new debt is accounted for prospectively, whereby the carrying amount of the debt remains unchanged and a new effective interest rate that equates the present value of the future cash payments with the carrying amount is determined and applied prospectively.

Costs incurred with third parties directly related to the troubled debt restructuring are expensed as incurred.

### ***Fair Value Measurements***

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Accounting guidance requires us to maximize the use of observable inputs, where available, and minimize the use of unobservable inputs when measuring fair value. This guidance also establishes a fair value hierarchy that prioritizes the inputs used in valuation techniques into the following three levels:

Level 1: Quoted prices in active markets for identical assets and liabilities that the reporting entity can access at the measurement date

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Level 2: Inputs other than quoted prices in active markets for identical assets and liabilities that are observable either directly or indirectly

Level 3: Unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions  
***Net Income (Loss) Per Common Share***

Basic and diluted net income (loss) per common share for the three and nine months ended September 29, 2012 and October 1, 2011 is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during the respective periods, without consideration of common stock equivalents. If there is a loss from continuing operations, diluted net income (loss) per share is computed in the same manner as basic net income (loss) per share is computed, even if we report net income after adjusting for discontinued operations.

**Table of Contents*****Recently Adopted Accounting Pronouncement***

In May 2011, the FASB issued authoritative guidance related to fair value measurements and disclosures. The new guidance results in a consistent definition of fair value and common requirements for measurement of and disclosure about fair value between accounting principles generally accepted in the United States and International Financial Reporting Standards. Our adoption of this guidance on January 1, 2012 did not have a material impact on our consolidated financial position, results of operations or cash flows.

**2. Related Party Transactions*****Debt-Related Transactions***

As discussed in the footnote above, pursuant to the Merger Agreement, we entered into agreements with the holders of our Notes to amend and restate the Notes and amended certain documents ancillary to the Notes on August 16, 2012, whereby our Old Third Lien Notes were split into the NextWave Third Lien Notes and the HoldCo Third Lien Notes. As of September 29, 2012, Avenue Capital Group and its affiliates ( Avenue Capital ) had an interest in shares of our issued and outstanding common stock, such that Avenue Capital would be considered a related party. On August 16, 2012, in exchange for Old Third Lien Notes with principal plus accrued interest of \$214.6 million, Avenue was issued NextWave Third Lien Notes and HoldCo Third Lien Notes with principal plus accrued interest of \$91.5 million and \$123.1 million, respectively. At September 29, 2012, Avenue Capital held \$115.2 million, or 75%, of the aggregate principal amount of our Senior Notes; \$167.9 million, or 78%, of the aggregate principal amount of our Second Lien Notes; \$93.4 million, or 28%, of the aggregate principal amount of our NextWave Third Lien Notes; and \$125.5 million, or 28%, of the aggregate principal amount of our HoldCo Third Lien Notes.

As of September 29, 2012, Solus Core Opportunities Master Fund Ltd and its affiliates and co-investors ( Solus ) had an interest in shares of our issued and outstanding common stock, such that Solus would be considered a related party. On August 16, 2012, in exchange for Old Third Lien Notes with principal plus accrued interest of \$129.2 million, Solus was issued NextWave Third Lien Notes and HoldCo Third Lien Notes with principal plus accrued interest of \$55.1 million and \$74.1 million, respectively. At September 29, 2012, Solus held \$38.2 million, or 25%, of the aggregate principal amount of our Senior Notes; \$47.8 million, or 22%, of the aggregate principal amount of our Second Lien Notes; \$56.2 million, or 17%, of the aggregate principal amount of our NextWave Third Lien Notes; and \$75.6 million, or 17%, of the aggregate principal amount of our HoldCo Third Lien Notes. At September 29, 2012 and December 31, 2011, Solus also held 0.4 million of warrants exercisable for shares of our common stock for an exercise price of \$0.07 each. In April 2012, the expiration date of these warrants was extended to April 2013.

On August 16, 2012, in exchange for Old Third Lien Notes with principal plus accrued interest of \$107.3 million, Navation, Inc., an entity owned by Allen Salmasi, our Chairman, was issued NextWave Third Lien Notes and HoldCo Third Lien Notes with principal plus accrued interest of \$45.8 million and \$61.5 million, respectively. As of September 29, 2012 Navation held \$46.7 million, or 14%, and \$62.8 million, or 14%, of the aggregate principal amounts of our NextWave Third Lien Notes and HoldCo Third Lien Notes, respectively.

On August 16, 2012, in exchange for Old Third Lien Notes with principal plus accrued interest of \$107.3 million, Douglas F. Manchester, a member of our Board of Directors, was issued NextWave Third Lien Notes and HoldCo Third Lien Notes with principal plus accrued interest of \$45.8 million and \$61.5 million, respectively. As of September 29, 2012, Mr. Manchester held \$46.7 million, or 14%, and \$62.8 million, or 14%, of the aggregate principal amounts of our NextWave Third Lien Notes and HoldCo Third Lien Notes, respectively.

***Business Divestitures***

In 2009, we sold the majority of the assets and liabilities of our Inquam Broadband GmbH ( IBG ) subsidiary to Inquam Holding GmbH ( IHG ), a limited liability company and a related party, for a nominal amount under an Asset Purchase Agreement. In connection with the sale, we entered into an earn-out agreement with IHG that provided for payment to us upon the subsequent sale of the outstanding share capital of IHG. In March 2012, the shareholders of IHG sold and transferred all of the share capital of IHG to a third party, whereby we received \$2.3 million in cash consideration and could receive up to an additional Euro 2.1 million (\$2.7 million at September 29, 2012) in cash consideration in the 12 to 24 months following the sale if regulatory and other conditions are met. As a result of the sale of IHG to a third party and final realization of our investments in our WiMax Telecom AG and IBG subsidiaries, we have deemed these entities to be substantially liquidated as of March 2012 and have recognized a net gain on disposal of \$19.9 million during the nine months ended September 29, 2012, all of which is reported in discontinued operations in the consolidated statement of operations and other comprehensive loss. The net gain represents the \$2.3 million in cash received plus \$17.6 million accumulated in the foreign currency translation adjustment component of equity for these two consolidated subsidiaries that was transferred to earnings upon substantial liquidation.

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In June 2010, we sold the capital stock of our WiMAX Telecom Slovakia, s.r.o ( WT SRO ) subsidiary to flyhigh Partners s. r. o. ( flyhigh ), a private limited liability company of which the controlling shareholder is the former managing director and statutory representative of WT SRO, for \$0.1 million and recognized an \$8.8 million net loss from business divestitures. Upon closing of the sale, we have no remaining obligations to provide financing to support the ongoing operations of WT SRO. In connection with the sale, we entered into an additional consideration agreement with flyhigh that provided for payment to us upon the sale of all or part of the capital stock of WT SRO by flyhigh to any third party. In May 2011, flyhigh sold all of the capital stock of WT SRO to a third party whereby we received \$0.4 million under the terms of the additional consideration agreement and recognized a net gain on business divestitures of \$0.4 million during the nine months ended October 1, 2011, all of which is reported in discontinued operations in the condensed consolidated statement of operations.

**Table of Contents****3. Wireless Spectrum Licenses**

We continue to hold for sale our wireless spectrum holdings. Any sale or transfer of the ownership of our wireless spectrum holdings is generally subject to regulatory approval. We are required to use the net proceeds from the sale of our wireless spectrum licenses to redeem our Notes.

As of September 29, 2012, we do not believe it is probable that these wireless spectrum licenses will be sold within the next twelve months and, therefore, have not classified them as assets held for sale.

During the nine months ended September 29, 2012, we sold wireless spectrum licenses in Canada for \$0.3 million and recognized net gains on the sales of \$0.1 million.

During the nine months ended October 1, 2011, we recognized \$0.3 million in net gains on the sale of wireless spectrum licenses, which represents our receipt of a \$0.3 million holdback payment that was pending FCC clearance of a prior sale by us.

**4. Long-Term Obligations**

Long-term obligations held by continuing operations consist of the following:

| <i>(dollars in thousands)</i>  | <b>September 29,<br/>2012</b> | <b>December 31,<br/>2011</b> |
|--|-------------------------------|------------------------------|
| 15% Senior Secured Notes, due December 31, 2012  | \$ 153,443                    | \$ 137,795                   |
| 15% Senior-Subordinated Secured Second Lien Notes due January 31, 2013   | 215,663                       | 193,291                      |
| 16% NextWave Third Lien Subordinated Secured Notes due February 28, 2013, net of unamortized discounts of \$892 and \$5,834 at September 29, 2012 and December 31, 2011, respectively  | 330,547                       | 685,086                      |
| 16% HoldCo Third Lien Subordinated Secured Notes due February 28, 2013, net of unamortized discount of \$1,200 at September 29, 2012   | 444,341                       |                              |
| Wireless spectrum leases, net of unamortized discounts of \$11,657 and \$13,251 at September 29, 2012 and December 31, 2011, respectively; expiring from 2014 through 2036 with one to five renewal options ranging from 10 to 15 years each | 19,929                        | 22,415                       |
| Long-term obligations  | 1,163,923                     | 1,038,587                    |
| Less current portion   | (1,148,434)                   | (142,019)                    |
| Long-term portion  | \$ 15,489                     | \$ 896,568                   |

The following table summarizes the activity related to our long-term obligations, net of any unamortized discounts, for the nine months ended September 29, 2012 and October 1, 2011:

| <i>(in thousands)</i>              | <b>Senior<br/>Notes</b> | <b>Second<br/>Lien<br/>Notes</b> | <b>NextWave<br/>Third<br/>Lien<br/>Notes</b> | <b>HoldCo<br/>Third<br/>Lien<br/>Notes</b> | <b>Other</b> | <b>Total</b> |
|------------------------------------|-------------------------|----------------------------------|--|--|--------------|--------------|
| <b>Balance, December 31, 2011</b>  | \$ 137,795              | \$ 193,291                       | \$ 685,086                                   | \$   | \$ 22,415    | \$ 1,038,587 |
| Paid-in-kind interest              | 15,648                  | 22,372                           | 77,525                                       | 8,535                                      |              | 124,080      |
| Amortization of debt discount      |                         |                                  | 3,387  | 355  | 1,594        | 5,336        |
| Transfer of Third Lien Notes       |                         |                                  | (435,451)                                    | 435,451                                    |              |              |
| Cash payments                      |                         |                                  |  |  | (4,080)      | (4,080)      |
| <b>Balance, September 29, 2012</b> | \$ 153,443              | \$ 215,663                       | \$ 330,547                                   | \$ 444,341                                 | \$ 19,929    | \$ 1,163,923 |

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|  |            |            |            |    |           |            |
|--|------------|------------|------------|----|-----------|------------|
| <b>Balance, January 1, 2011</b>                            | \$ 122,261 | \$ 158,876 | \$ 497,574 | \$ | \$ 25,759 | \$ 804,470 |
| Paid-in-kind interest                                      | 13,778     | 19,481     | 65,189     |    |           | 98,448     |
| Amortization of debt discount                              | 2,215      | 6,471      | 73,518     |    | 1,700     | 83,904     |
| Extension of wireless spectrum lease                       |            |            |            |    | 398       | 398        |
| Cash payments  | (5,300)    |            |            |    | (4,837)   | (10,137)   |
| Favorable settlement reclassified to restructuring credits |            |            |            |    | (1,076)   | (1,076)    |
| <b>Balance, October 1, 2011</b>                            | \$ 132,954 | \$ 184,828 | \$ 636,281 | \$ | \$ 21,944 | \$ 976,007 |

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The following table summarizes the activity related to our unamortized deferred financing costs for the nine months ended September 29, 2012 and October 1, 2011:

|  | Unamortized Deferred Financing Costs |                         |                                    |                                  | Total    |
|--|--------------------------------------|-------------------------|------------------------------------|----------------------------------|----------|
|  | Senior<br>Notes                      | Second<br>Lien<br>Notes | NextWave<br>Third<br>Lien<br>Notes | HoldCo<br>Third<br>Lien<br>Notes |          |
| <i>(in thousands)</i>                    |                                      |                         |                                    |                                  |          |
| <b>Balance at December 31, 2011</b>      | \$                                   | \$                      | \$ 9                               | \$                               | \$ 9     |
| Transfer of Third Lien Notes             |                                      |                         | (3)                                | 3                                |          |
| Amortization of deferred financing costs |                                      |                         | (5)                                | (1)                              | (6)      |
| <b>Balance at September 29, 2012</b>     | \$                                   | \$                      | \$ 1                               | \$ 2                             | \$ 3     |
| <b>Balance at January 1, 2011</b>        | \$ 35                                | \$ 3,076                | \$ 151                             | \$                               | \$ 3,262 |
| Amortization of deferred financing costs | (35)                                 | (2,504)                 | (109)                              |                                  | (2,648)  |
| <b>Balance at October 1, 2011</b>        | \$                                   | \$ 572                  | \$ 42                              | \$                               | \$ 614   |

**5. Business Divestiture and Discontinued Operations*****Business Divestiture***

During the nine months ended October 1, 2011, we completed the sale of our remaining subsidiaries in Latin America to a third party for \$3.0 million and recognized a gain on the divestiture of \$1.7 million, all of which is reported in discontinued operations in the condensed consolidated statement of operations, and of which \$1.3 million was accumulated in the foreign currency translation adjustment component of equity for these consolidated subsidiaries and transferred to earnings upon substantial liquidation.

***Discontinued Operations***

In an effort to reduce our future working capital requirements and in order to comply with the terms of our Notes our Board of Directors approved the implementation of a global restructuring initiative in 2008, pursuant to which we have divested, either through sale, dissolution or closure, our multimedia, network infrastructure and semiconductor businesses.

Our continuing operations are comprised of our portfolio of licensed wireless spectrum assets. We continue to pursue sales of our wireless spectrum license assets, the net proceeds of which will be used to reduce our outstanding indebtedness.

The results of operations of our Global Services Support strategic business unit and our WiMAX Telecom, Inquam and South American businesses, have been reported as discontinued operations in the consolidated financial statements for all periods presented, prior to sale or dissolution of the respective business.

The carrying amounts of the assets and liabilities of our discontinued operations are as follows:

| <i>(in thousands)</i>                | September 29,<br>2012 | December 31,<br>2011 |
|--------------------------------------|-----------------------|----------------------|
| Cash and cash equivalents            | \$ 661                | \$ 5                 |
| Property and equipment held for sale | 3,500                 | 3,500                |
| Other assets                         | 1                     | 6                    |

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|  |    |       |    |       |
|--|----|-------|----|-------|
| Current assets of discontinued operations      | \$ | 4,162 | \$ | 3,511 |
| Current liabilities of discontinued operations | \$ | 725   | \$ | 172   |

The financial results of our discontinued operations are as follows:

| <i>(in thousands)</i>                                      | Three Months Ended    |                    | Nine Months Ended     |                    |
|--|-----------------------|--------------------|-----------------------|--------------------|
|  | September 29,<br>2012 | October 1,<br>2011 | September 29,<br>2012 | October 1,<br>2011 |
| Revenues   | \$                    | \$                 | \$                    | \$ 6               |
| Total operating expense credits <sup>(1)</sup>             | (117)                 | (65)               | (268)                 | (613)              |
| Net gains (losses) on business divestitures <sup>(2)</sup> |                       | (1)                | 19,862                | 2,119              |
| Income before income taxes                                 | 16                    | 66                 | 20,029                | 2,740              |
| Net income from discontinued operations                    | 10                    | 42                 | 18,563                | 1,740              |

(1) Total operating expense credits for the three months ended September 29, 2012 includes \$0.1 million in sublease revenue. Total operating expense credits for the nine months ended September 29, 2012 includes \$0.3 million in sublease revenue. Total operating expense credits for the three months ended October 1, 2011 includes \$0.1 million in sublease revenue. Total operating expense credits for the nine months ended October 1, 2011 include a \$0.3 million favorable settlement with a service vendor, \$0.2 million in net gains on the sale of equipment and \$0.2 million in sublease revenue.

(2) Net gains on business divestitures for the nine months ended September 29, 2012 includes \$2.3 million in cash consideration received plus \$17.6 million accumulated in the foreign currency translation adjustment component of equity that was transferred to earnings upon substantial liquidation of our foreign entities.

Net gains on business divestitures for the nine months ended October 1, 2011 includes \$3.4 million in cash consideration received, partially offset by \$1.3 million accumulated in the foreign currency translation adjustment component of equity that was transferred to earnings upon substantial liquidation of our foreign entities.



**Table of Contents****6. Net Income (Loss) Per Common Share Information**

Our weighted-average number of common shares outstanding includes the weighted-average number of 0.4 million warrants during each of the three and nine months ended September 29, 2012 and 1.8 million warrants during each of the three and nine months ended October 1, 2011, held by a related party (Note 2), exercisable for shares of our common stock, as they are issuable for an exercise price of \$0.07 each. At September 29, 2012, 0.4 million of these warrants remained outstanding.

The following securities that could potentially reduce net income or increase net loss per share in the future are not included in the determination of diluted income (loss) per share as they are antidilutive. The share amounts are determined using a weighted-average of the common stock equivalents outstanding during the respective periods

| <i>(in thousands)</i>     | Three Months Ended    |                    | Nine Months Ended     |                    |
|---------------------------|-----------------------|--------------------|-----------------------|--------------------|
|                           | September 29,<br>2012 | October 1,<br>2011 | September 29,<br>2012 | October 1,<br>2011 |
| Outstanding stock options | 2,163                 | 1,486              | 2,040                 | 1,510              |
| Unvested restricted stock | 1,169                 | 1,236              | 1,189                 | 1,236              |

**7. Stockholders Deficit**

Changes in shares of common stock outstanding and total stockholders deficit for the nine months ended September 29, 2012 are as follows:

| <i>(in thousands)</i>  | Shares of<br>Common<br>Stock<br>Outstanding | Total<br>Stockholders<br>Deficit |
|--|---|----------------------------------|
| <b>Balance at December 31, 2011</b>  | 24,938                                      | \$ (660,767)                     |
| Share-based compensation expense   |   | 295                              |
| Foreign currency translation adjustment transferred to earnings upon substantial liquidation of foreign entities |   | (17,578)                         |
| Foreign currency translation adjustment  |   | 1,259                            |
| Net loss   |   | (131,875)                        |
| <b>Balance at September 29, 2012</b>   | 24,938                                      | \$ (808,666)                     |

**8. Fair Value Measurements*****Assets and Liabilities Measured at Fair Value on a Recurring Basis***

There have been no significant changes to our assets and liabilities measured at fair value on a recurring basis during the nine months ended September 29, 2012

***Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis***

There have been no significant changes to our assets and liabilities measured at fair value on a nonrecurring basis during the nine months ended September 29, 2012.

***Fair Value of Other Financial Instruments***

The carrying amounts of certain of our financial instruments of continuing operations, including cash and cash equivalents, short-term investments, accounts payable and accrued expenses, approximate fair value due to their short-term nature. The carrying amounts and fair values of our long-term obligations of continuing operations are as follows:

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| <i>(in thousands)</i>     | September 29, 2012 |            | December 31, 2011 |            |
|---------------------------|--------------------|------------|-------------------|------------|
|                           | Carrying Amount    | Fair Value | Carrying Amount   | Fair Value |
| Senior Notes              | \$ 153,443         | \$ 153,678 | \$ 137,795        | \$ 138,353 |
| Second Lien Notes         | 215,663            | 216,239    | 193,291           | 194,701    |
| NextWave Third Lien Notes | 330,547            | 331,910    | 685,086           | 697,803    |
| HoldCo Third Lien Notes   | 444,341            | 446,172    |                   |            |
| Wireless spectrum leases  | 19,929             | 17,318     | 22,415            | 19,289     |

At September 29, 2012 and December 31, 2011, we determined the fair value of our long-term obligations using discounted cash flow models with discount rates that represent our respective estimated incremental borrowing rates as of that date for that type of instrument (level 2 inputs).

**Table of Contents****9. Commitments and Contingencies*****Legal Proceedings***

On September 16, 2008, a putative class action lawsuit, captioned Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants, was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned Benjamin et al. v. NextWave Wireless Inc. et al. was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint, and we subsequently filed a Motion to Dismiss. On March 16, 2011, the Court granted our Motion and dismissed the complaint without prejudice. On May 5, 2011, the lead plaintiff filed a Third Amended Complaint, and we again filed a Motion to Dismiss. On November 21, 2011, the Court granted our Motion and dismissed the case with prejudice. On December 19, 2011, the lead plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. We and our insurance carrier have agreed with the lead plaintiff on the final terms of a settlement. The settlement provides for a full release and dismissal of all claims asserted against all defendants in the litigation and the appeal, in exchange for payment of \$1.4 million by our insurance carrier. The settlement is subject to court approval following notice to the potential class members. The Court of Appeals dismissed the appeal on June 25, 2012 and the case has been returned to the district court for the approval process. The district court has approved the application for preliminary approval of the settlement and the final approval hearing is scheduled for November 9, 2012. We continue to maintain the D&O and corporate liability insurance covering certain risks associated with securities claims filed against us or our directors and officers, as described above, with insurance from multiple carriers, each insuring a different layer of exposure, up to a total of \$50 million. We have accrued for liabilities equal to the financial deductible of our D&O policy for the period covering the time the class action lawsuit for this matter was filed. Other than accruing for our financial deductible, we have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability in excess of our insurance coverage, while possible, is not probable.

On August 5, 2012, the Company became aware that the liquidator in the Go Networks (Israel) Ltd. bankruptcy, which was filed in Tel Aviv in September 2008, purportedly made a claim against the Company for damages alleging that the Company contributed to the demise of and failed to sufficiently fund its former subsidiary Go Networks (Israel) Ltd. While the Company believes that the liquidator's claims are without merit, the Company cannot yet estimate the amount of legal fees and damages, if any, that could be awarded in connection with such claims.

On August 31, 2012, a putative class action lawsuit was filed in the Court of Chancery of the State of Delaware against the Company, AT&T, Merger Sub, Allen Salmasi, Douglas F. Manchester, Jack Rosen, Nadar Tavakoli, Carl E. Vogel and William H. Webster alleging, among other things, that the Company's board of directors and certain of its executive officers breached various fiduciary duties in connection with the board of directors' approval of the proposed Merger and that the Company, AT&T and Merger Sub aided and abetted such alleged breaches of fiduciary duties. The plaintiff seeks injunctive relief preventing the Merger, an order rescinding the proposed Merger in the event it is not enjoined, and damages as a result of the alleged actions of the defendants, including attorneys' and experts' fees (the foregoing, the Weiss Action). Subsequently, on September 6, 2012, two additional complaints were filed in the Superior Court of California, County of San Diego by Thomas Juzwik and Elias Rodriguez against the Company, AT&T, Merger Sub, Allen Salmasi, Jack Rosen, William Webster, Douglas F. Manchester, Robert Symington, Frank Cassou and Francis Harding, containing substantially similar allegations to those set forth in the Weiss Action. We collectively refer to the Juzwik, Rodriguez and Weiss actions as, the actions.

In order to avoid the costs, risks and uncertainties inherent in litigation and to allow stockholders to vote on the proposal to adopt the Merger Agreement at the scheduled special meeting, the Company and the other defendants entered into a memorandum of understanding (the Memorandum of Understanding) with plaintiffs' counsel on September 20, 2012 in connection with the actions, pursuant to which the Company, the other named defendants and the plaintiffs have agreed to settle the actions subject to court approval. If the Delaware court approves the settlement, the Weiss action will be dismissed with prejudice and the plaintiffs in the Juzwik and Rodriguez actions will dismiss their complaints based on the settlement of the Weiss action. We continue to maintain the D&O and corporate liability insurance covering certain risks associated with securities claims filed against us or our directors and officers, as described above, with insurance from multiple carriers, each insuring a different layer of exposure, up to a total of \$50 million. We have accrued for liabilities equal to the financial deductible of our D&O policy for the period covering the time the class action lawsuit for this matter was filed. Other than accruing for our financial deductible, we have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability in excess of our insurance coverage, while possible, is not probable.

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We are also currently involved in other legal proceedings, which we do not believe will result in a material liability. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of September 29, 2012, other than accrual for the financial deductible described above, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.

**Table of Contents****ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operation**

*In addition to historical information, the following discussion contains forward-looking statements that are subject to risks and uncertainties. Our actual results could differ substantially from those anticipated by such forward-looking information due to a number of factors, including, but not limited to, risks described in the section entitled "Risk Factors" and elsewhere in this Quarterly Report. Additionally, the following discussion and analysis should be read in conjunction with the condensed consolidated financial statements and the notes thereto included in Item 1 of Part I of this Quarterly Report and the audited consolidated financial statements and notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations for the year ended December 31, 2011 contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 12, 2012. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof, and should be aware that the Company's actual results could differ materially from those described in the forward-looking statements due to a number of factors, including, without limitation, those factors described under "Risk Factors" and elsewhere in this Quarterly Report. Any forward-looking statements should be considered in light of these factors. Unless otherwise required by law, the Company undertakes no obligation, and expressly disclaims any obligation, to update or publicly release the results of any revisions to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, or otherwise.*

*We operate on a 52-53 week fiscal year ending on the Saturday nearest to December 31 of the current calendar year or the following calendar year. Normally, each fiscal year consists of 52 weeks, but every five or six years the fiscal year consists of 53 weeks. Fiscal years 2012 and 2011 are 52-week years ending on December 29, 2012 and December 31, 2011, respectively. The three- and nine-month periods ending September 29, 2012 and October 1, 2011 include 13 weeks and 39 weeks each, respectively.*

*The accompanying financial statements have been prepared on the basis of accounting principles applicable to a going concern, which contemplates the realization of assets and extinguishment of liabilities in the normal course of business. As more fully described in Note 1 to the consolidated financial statements, we have incurred recurring operating losses and have substantial debt maturities in 2012 and 2013 and our cash reserves will not be sufficient to meet these payment obligations. These conditions raise substantial doubt about our ability to continue as a going concern. The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.*

**OVERVIEW****Third Quarter of 2012**

On August 1, 2012, we entered into an Agreement and Plan of Merger (the "Merger Agreement") with AT&T and Rodeo Acquisition Sub Inc., a Delaware corporation and a direct wholly-owned subsidiary of AT&T ("Merger Sub"). Under the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will be merged with and into the Company, with the Company continuing as the surviving corporation and a direct wholly-owned subsidiary of AT&T (the "Merger").

As required pursuant to the Merger Agreement, the holders of the Notes amended certain documents ancillary to the Notes on August 16, 2012. Our Old Third Lien Notes were amended and restated to be no longer convertible into shares of common stock of the Company and were split into two series to provide that certain of the Company's obligations to the holders of the Old Third Lien Notes remain with the Company and the remaining obligations becoming direct obligations of NextWave HoldCo. Specifically, \$325 million of the Company's outstanding obligations under the Old Third Lien Notes remained the Company's direct obligations ("NextWave Third Lien Notes") and the remaining principal balance of our Old Third Lien Notes plus accrued and unpaid interest as of August 15, 2012 became the direct obligations of NextWave HoldCo ("HoldCo Third Lien Notes"). These amendments provide for a call right whereby under certain circumstances the noteholder representative is permitted to require that 100% of the equity of NextWave HoldCo be transferred to the holders of the HoldCo Third Lien Notes to redeem such notes, in full.

The amended and restated Senior Notes provide for the issuance of up to \$15 million of additional notes (the "Senior Incremental Notes") for payment of expenses incurred in the ordinary course of operations or in connection with payments to be made in connection with the merger. The amended and restated Senior Notes accrue interest at an annual rate equal to 15% per annum and the Senior Incremental Notes will accrue interest at an annual rate not to exceed 10% per annum.

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Our net loss from continuing operations during the third quarter of 2012 was \$55.6 million, compared to \$69.5 million for the third quarter of 2011.

Our net loss from continuing operations during the first nine months of 2012 was \$150.4 million, compared to \$197.6 million for the first nine months of 2011.

Our net loss is driven by the accrual of substantial payment-in-kind interest on our secured debt, expenses in maintaining our wireless spectrum assets and expenses of remaining a public company, which expenses are not offset by any material revenue. We expect that these losses will persist as we continue our efforts to monetize our wireless spectrum assets.

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### **Our Business**

NextWave Wireless Inc. is a holding company for our wireless spectrum portfolio. Our continuing operations are focused on the management of our wireless spectrum interests. Our total domestic spectrum holdings consist of approximately 3.9 billion MHz POPs. The term MHz-POPs is defined as the product derived from multiplying the number of megahertz associated with a license by the population of the license's service area. Our wireless license portfolio covers approximately 218.6 million total POPs, with 104.8 million POPs covered by 20 MHz or more of spectrum, and an additional 94.9 million POPs covered by at least 10 MHz of spectrum. In addition, a number of markets, including much of the New York City metropolitan region, are covered by 30 MHz or more of spectrum. Our domestic spectrum resides in the 2.3 GHz Wireless Communication Services (WCS), 2.5 GHz Broadband Radio Service (BRS)/Educational Broadband Service (EBS), and 1.7/2.1 GHz Advanced Wireless Service (AWS) bands and offers propagation and other characteristics suitable to support high-capacity, mobile broadband services.

Our international spectrum included in continuing operations include 2.3 GHz licenses in Canada with 15 million POPs covered by 30 MHz of spectrum.

Our pending Merger and the related transactions are described in more detail in Note 1 to the Condensed Consolidated Financial Statements.

### ***Discontinued Operations***

The results of operations of our Global Services Support strategic business units and our WiMAX Telecom, Inquam and South American businesses, have been reported as discontinued operations in the condensed consolidated financial statements for all periods presented, prior to sale or dissolution of the respective business.

Our discontinued international operations hold a nationwide 2.0 GHz license in Norway.

## **RESULTS OF OPERATIONS**

The results of operations of our Global Services Support strategic business units and our WiMAX Telecom, Inquam and South American businesses, have been reported as discontinued operations in the consolidated financial statements for all periods presented, prior to sale or dissolution of the respective business.

### ***Comparison of Our Third Quarter of 2012 to Our Third Quarter of 2011 – Continuing Operations***

#### **General and Administrative**

General and administrative expenses from continuing operations during the third quarter of 2012 were \$11.1 million compared to \$5.0 million for the third quarter of 2011. The \$6.1 million increase is attributable primarily to higher legal and professional fees incurred as a result of the Merger and amendment of our Notes during the third quarter.

Included in general and administrative expenses during each of the third quarters of 2012 and 2011 is \$1.9 million of amortization of finite-lived wireless spectrum. Also included in general and administrative expenses during the third quarters of 2012 and 2011 is \$0.1 million and \$0.2 million, respectively, of share-based compensation expense.

#### **Interest Expense**

Interest expense from continuing operations during the third quarter of 2012 was \$44.8 million, compared to \$64.8 million during the third quarter of 2011, a decrease of \$20.0 million. The decrease is primarily attributable to lower interest accretion of debt discounts and issuance costs of \$0.2 million, \$3.1 million and \$24.6 million on our Senior Notes, Second Lien Notes and Third Lien Notes, respectively. These decreases were partially offset by higher principal and paid-in-kind interest of \$0.7 million, \$1.1 million and \$6.1 million on our Senior Notes, Second Lien Notes and Third Lien Notes, respectively.

Interest expense on our Senior Notes, Second Lien Notes and Third Lien Notes during 2012 is expected to be lower than that recognized during 2011 attributed to lower accretion of debt discounts and issuance costs related to these, partially offset by higher paid-in-kind interest.

#### **Income Taxes**

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During the third quarters of 2012 and 2011, substantially all of our U.S. subsidiaries had net losses for tax purposes with full valuation allowances.



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Our effective income tax rate during the third quarter of 2012 was 0.4% resulting in an income tax benefit of \$0.2 million on our pre-tax loss of \$55.8 million. The income tax benefit is a result of taxes provided on income from discontinued operations that can be offset by losses from continuing operations.

Our effective income tax rate during the third quarter of 2011 was 0.4%, resulting in an income tax benefit of \$0.3 million on our pre-tax loss of \$69.8 million. The income tax benefit consists of a \$0.3 million tax benefit on taxes provided on income from discontinued operations that can be offset by losses from continuing operations.

### ***Comparison of Our First Nine Months of 2012 to Our First Nine Months of 2011 Continuing Operations***

#### **General and Administrative**

General and administrative expenses from continuing operations during the first nine months of 2012 were \$21.7 million compared to \$17.3 million for the first nine months of 2011. The \$4.4 million increase is attributable primarily to higher legal and professional fees incurred as a result of the Merger and amendment of our Notes of \$5.3 million, partially offset by lower maintenance and headcount related expenditures in addition to lower share-based compensation expense during 2012. Of the offset, \$0.3 million is attributed to maintenance expenditures incurred during 2011 associated with certain build-out or substantial service requirements of our licensed wireless spectrum, which generally must be satisfied as a condition of the license.

Included in general and administrative expenses during the first nine months of 2012 and 2011 is \$5.6 million and \$5.7 million, respectively, of amortization of finite-lived wireless spectrum. Also included in general and administrative expenses during the first nine months of 2012 and 2011 is \$0.3 million and \$0.6 million, respectively, of share-based compensation expense.

#### **Restructuring Credit**

During the first nine months of 2011, we recognized a benefit of \$1.1 million resulting from a renegotiation of our \$1.9 million long-term obligation stemming from a previous renegotiation of one of our abandoned lease liabilities whereby we paid \$0.8 million in full settlement of the obligation.

#### **Net gain on Sale of Wireless Spectrum License**

During the first nine months of 2012 we recognized a net gain of \$0.1 million on the sale of our wireless spectrum licenses in Canada.

During the first nine months of 2011, we recognized a \$0.3 million gain on the sale of wireless spectrum licenses which represents our receipt of a \$0.3 million holdback payment that was pending FCC clearance of a prior sale by us.

#### **Interest Expense**

Interest expense from continuing operations during the first nine months of 2012 was \$129.4 million, compared to \$185.0 million during the first nine months of 2011, a decrease of \$55.6 million. The decrease is primarily attributable to lower interest accretion of debt discounts and issuances costs of \$2.3 million, \$9.0 million and \$69.9 million on our Senior Notes, Second Lien Notes and Third Lien Notes, respectively. These decreases were partially offset by higher principal and paid-in-kind interest of \$1.9 million, \$2.9 million and \$20.9 million on our Senior Notes, Second Lien Notes and Third Lien Notes, respectively.

#### **Other Income and Expense, Net**

Other income, net, from continuing operations during the first nine months of 2011 was \$1.2 million, and reflects primarily changes in the estimated fair values of our embedded derivatives.

#### **Income Taxes**

During the first nine months of 2012 and 2011, substantially all of our U.S. subsidiaries had net losses for tax purposes with full valuation allowances.

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Our effective income tax rate during the first nine months of 2012 was 0.4% resulting in an income tax benefit of \$0.6 million on our pre-tax loss of \$151.1 million. The income tax benefit is a result of taxes provided on income from discontinued operations that can be offset by losses from continuing operations.

Our effective income tax rate during the first nine months of 2011 was 1.0%, resulting in an income tax benefit of \$2.1 million on our pre-tax loss of \$199.7 million. The income tax benefit consists of a \$1.3 million tax benefit from the effect of the change in the effective income tax rate on the deferred tax liabilities associated with indefinite-lived intangible assets and a \$0.8 million tax benefit on taxes provided on income from discontinued operations that can be offset by losses from continuing operations.

**Table of Contents****Comparison of Our Third Quarter and First Nine Months of 2012 to Our Third Quarter and First Nine Months of 2011 Discontinued Operations**

The results of operations of our discontinued Global Services Support, WiMAX Telecom, Inquam and South American businesses, are as follows:

| <i>(in millions)</i>                    | Three Months Ended    |                    |          | Nine Months Ended     |                    |                        |
|---|-----------------------|--------------------|----------|-----------------------|--------------------|------------------------|
|   | September 29,<br>2012 | October 1,<br>2011 | Decrease | September 29,<br>2012 | October 1,<br>2011 | Increase<br>(Decrease) |
| Total operating expense credits         | \$ (0.1)              | \$ (0.1)           | \$       | \$ (0.3)              | \$ (0.6)           | \$ 0.3                 |
| Net gains on business divestitures      |                       |                    |          | 19.9                  | 2.1                | 17.8                   |
| Income before income taxes              |                       | 0.1                | (0.1)    | 20.0                  | 2.7                | 17.3                   |
| Net income from discontinued operations |                       |                    |          | 18.6                  | 1.7                | 16.9                   |
| <b>Total Operating Expense Credits</b>  |                       |                    |          |                       |                    |                        |

Total operating expense credits for the third quarter and first nine months of 2012 include \$0.1 million and \$0.3 million, respectively, in sublease revenue.

Total operating expense credits for the third quarter of 2011 include \$0.1 million in sublease revenue. Total operating expense credits for the first nine months of 2011 include a \$0.3 million favorable settlement with a service vendor, \$0.2 million in net gains on the sale of equipment and \$0.2 million in sublease revenue.

**Net Gains on Business Divestitures**

In 2009, we sold the majority of the assets and liabilities of our Inquam Broadband GmbH ( IBG ) subsidiary to Inquam Holding GmbH ( IHG ), a limited liability company and a related party, for a nominal amount under an Asset Purchase Agreement. In connection with the sale, we entered into an earn-out agreement with IHG that provided for payment to us upon the subsequent sale of the outstanding share capital of IHG. In March 2012, the shareholders of IHG sold and transferred all of the share capital of IHG to a third party, whereby we received \$2.3 million in cash consideration. As a result of the sale of IHG and final realization of our investments in our WiMax Telecom AG and IBG subsidiaries, we recognized a net gain on disposal of \$19.9 million during the first six month of 2012 which represents the \$2.3 million in cash received plus \$17.6 million accumulated in the foreign currency translation adjustment component of equity for these two consolidated subsidiaries that was transferred to earnings upon substantial liquidation.

During the first nine months of 2011, we completed the sale of our remaining subsidiaries in Latin America to a third party for \$3.0 million, recognizing a gain on the divestiture of \$1.7 million, and recognized a gain of \$0.4 million for cash received in May 2011 under the terms of an additional consideration agreement that we entered into upon the sale of WT SRO in June 2010.

**Income Taxes**

The effective income tax rates for discontinued operations during the third quarter and first nine months of 2012 were 37.5% and 7.3% resulting in income tax provisions of \$6,000 and \$1.5 million on pre-tax income from discontinued operations of \$16,000 and \$20.0 million, respectively. The tax provisions were recorded as a result of allocations of current year losses from continuing operations during the respective periods.

The effective income tax rate for discontinued operations during the third quarter and first nine months of 2011 was 36.5%, resulting in income tax provisions of \$24,000 and \$1.0 million on pre-tax income from discontinued operations of \$0.1 million and \$2.7 million, respectively. The tax provisions were recorded as a result of allocations of current year losses from continuing operations during the respective periods.

**LIQUIDITY AND CAPITAL RESOURCES**

We have funded our operations, business combinations, strategic investments and wireless spectrum license acquisitions primarily with the \$550.0 million in cash received in our initial capitalization in April 2005, the net proceeds of \$295.0 million from the issuance of the Senior Notes in 2006 and 2010, the net proceeds of \$351.1 million from our issuance of Series A Senior Convertible Preferred Stock in March 2007 and the net proceeds of \$101.0 million from our issuance of the Second Lien Notes in 2008 and 2009. Our total unrestricted cash and cash

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equivalents included in current assets of continuing operations totaled \$5.9 million at September 29, 2012. We had a net working capital deficit of \$1,141.4 million at September 29, 2012.

In an effort to reduce our future working capital requirements and in order to comply with the terms of our Senior Notes, Second Lien Notes and Third Lien Notes our Board of Directors approved the implementation of a global restructuring initiative in 2008, pursuant to which we have divested, either through sale, dissolution or closure, our multimedia, network infrastructure and semiconductor businesses. We have also taken other cost reduction actions. The results of operations of these businesses are reported as discontinued operations in the accompanying condensed consolidated financial statements.

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During the first nine months of 2012, our continuing operations used cash of \$12.5 million for operations, which includes costs to maintain our wireless spectrum licenses and costs associated with being a public reporting company. We expect that our cash requirements for our continuing operations will continue at this rate during the remainder of 2012.

In 2011, we had capital expenditure needs associated with certain build-out or substantial service requirements which apply to our licensed domestic wireless spectrum, which generally must be satisfied as a condition of the license. The substantial service deadlines applicable to our domestic and Canadian wireless spectrum assets, and our activities to meet these requirements, are described below:

The substantial service deadline for our domestic Wireless Communication Services ( WCS ) spectrum was July 21, 2010 under the FCC rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with its June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. On October 17, 2012, the FCC adopted revisions to the May 2010 rules, further extending the build-out deadlines for the WCS licenses to 48 and 78 months after the effective date of the new rules, which has not yet occurred. Failure to make the substantial service demonstrations without seeking and obtaining an extension from the FCC would result in license forfeiture.

Educational Broadband Service ( EBS ) licensees were required to demonstrate that they are providing substantial service in their license areas by November 1, 2011. To meet the substantial service requirements for EBS spectrum, we arranged with our EBS licensees to either (a) have the EBS licensee continue to use the spectrum to provide educational services in the cases where the EBS licensee is currently providing such service or (b) provide educational services on a network that was installed by us, at our cost, either of which option was intended to deliver educational services over the spectrum in compliance with the FCC's educational safe harbor to meet the substantial service showing by the deadline. We have completed build-out activities for our EBS leases. All of the EBS licensees with whom we have leases filed substantial service showings by the deadline, which the FCC accepted.

We also operate or hold spectrum licenses through various subsidiaries in Canada and Norway. In Canada, our 2.3 GHz licenses were subject to mid-term in-use demonstration deadlines of November 2012 and April 2013 for 59 and 24 of our licenses, respectively. On March 29, 2012, the Canadian regulatory authority, Industry Canada, granted an extension of two years, resulting in new in-use demonstration deadlines of November 2014 and April 2015. On October 18, 2012, Industry Canada released a public consultation seeking input on whether and how to extend further the in-use demonstration deadlines for the WCS licenses. In order for us to operate our Canadian spectrum under current Canadian ownership rules, we will need a Canadian-controlled partner. Changes to the Canadian ownership rules have been proposed, but not yet adopted. There can be no assurance that: 1) we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline, or 2) that the new ownership rules will enable us to develop a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of these licenses, in the absence of a further extension by Industry Canada, could result in forfeiture of the applicable licenses. At September 29, 2012, we held a total of 83 licenses in Canada. We do not have specific build-out obligations in Norway.

### ***Debt Maturities and Ability to Continue as Going Concern***

As of September 29, 2012, the aggregate principal amount of our secured indebtedness was \$1,146 million. This amount includes our Senior Notes, due December 2012, with an aggregate principal amount of \$153.4 million, our Second Lien Notes, due January 2013, with an aggregate principal amount of \$215.7 million and our NextWave and HoldCoThird Lien Notes, due February 2013, with aggregate principal amounts of \$331.4 million and \$445.5 million, respectively. Our current cash reserves are not sufficient to meet our payment obligations under our secured notes at their current maturity dates.

In connection with the Merger Agreement, on August 1, 2012, the Company and its wholly owned subsidiary NextWave Wireless LLC, and certain subsidiary guarantors entered into the Forbearance Agreement with the holders of the Notes. Pursuant to the Forbearance Agreement, each holder has agreed, and directed The Bank of New York Mellon, as collateral agent, to temporarily forbear from exercising their respective rights and remedies in connection with potential defaults and events of default that may occur during the forbearance period. The forbearance period will terminate on the earliest to occur of the effective time of the Merger, sixty days after the date of any termination of the Merger

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Agreement and January 31, 2014.

As required pursuant to the Merger Agreement, the holders of the Notes amended and restated the Notes and amended certain documents ancillary to the Notes on August 16, 2012. Our Old Third Lien Notes were split into two series whereby certain of our Old Third Lien Notes remain direct obligations of the Company and the remaining principal balance of our Old Third Lien Notes

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became the direct obligations of NextWave HoldCo LLC, a new subsidiary that we formed on August 8, 2012, under the laws of the State of Delaware ( NextWave HoldCo ). Specifically, the parties have agreed that \$325 million of the Company's outstanding obligations under the Old Third Lien Notes remain the Company's direct obligations ( NextWave Third Lien Notes ) and the remaining principal balance of the Old Third Lien Notes plus accrued and unpaid interest as of August 15, 2012 became the direct obligations of NextWave HoldCo ( HoldCo Third Lien Notes ). We provided a third priority guarantee of NextWave HoldCo's obligations under the HoldCo Third Lien Notes. The terms of the HoldCo Third Lien Notes contain restrictive covenants relating to, among other things:

a restriction on the sale of the assets held by NextWave HoldCo or any of its subsidiaries unless holders of 75% of the HoldCo Third Lien Notes provide consent and a requirement that all net proceeds received from such sales will be held on behalf of and in trust for the holders of the HoldCo Third Lien Notes by the third lien collateral agent (or escrow agent after exercise of the call right);

a requirement that we consult with the holders of the HoldCo Third Lien Notes and use our best efforts to promptly solicit asset sales or other strategic transactions with respect to the assets held by NextWave HoldCo or any of its subsidiaries and a requirement that all net proceeds received from such sales will be held on behalf of the holders of the HoldCo Third Lien Notes by the third lien collateral agent (or escrow agent after exercise of the call right);

the third lien collateral agent (or escrow agent after exercise of the call right) will hold all such proceeds described above until our senior notes and our subordinated notes have been satisfied in full or the holders of 66 2/3% of our senior notes and 66 2/3% of our subordinated notes have consented to release of the proceeds to the holders of the HoldCo Third Lien Notes;

a restriction on the investments, with customary exceptions and exclusions, we can make or own;

a restriction on the termination, waiver or material amendment of the terms of any of our material agreements or an amendment to the Merger Agreement which would be materially adverse to the holders of the HoldCo Third Lien Notes, in each case, without the prior written consent of the holders of 75% of the HoldCo Third Lien Notes;

a requirement that we shall cause the Merger to be consummated in accordance with the terms and conditions of the Merger Agreement as soon as practicable and, in any event, no later than July 31, 2013; and

the noteholder representative (as defined below) (or the escrow agent after exercise of the call right) also has the right to purchase (on behalf of and in trust for the holders of the HoldCo Third Lien Notes) all of our senior notes and our subordinated notes subject to the obligation to keep such notes outstanding until (A) the consummation of the merger or (B) in the event a bankruptcy proceeding is initiated, the exercise of a call right by Parent to acquire the NextWave Third Lien Notes and the payment of our senior notes and our subordinated notes in the bankruptcy proceeding.

In connection with the amended and restated Notes, NextWave LLC and NextWave HoldCo entered into a Call Option/Note Redemption Agreement (the Call Agreement ) with Wilmington Trust, National Association (the noteholder representative. Pursuant to the Call Agreement, the noteholder representative has been issued a call right, on behalf of the holders of the HoldCo Third Lien Notes, to require that we transfer 100% of the equity of NextWave HoldCo to the holders of the HoldCo Third Lien Notes to redeem, in full, the HoldCo Third Lien Notes. The NextWave HoldCo call right will not be exercisable until receipt of any required regulatory approvals and one of the following:

receipt of notification by AT&T that the merger will occur and conditions to closing have been satisfied or waived so long as AT&T deposits, or causes to be deposited, \$25 million into the escrow fund as required pursuant to the Merger Agreement, in which case all of the limited liability company interests of NextWave HoldCo shall be automatically transferred to the holders of the HoldCo Third Lien Notes in redemption of such notes as of immediately prior to the merger closing;

the termination of the Merger Agreement and the determination by holders of 75% or more of the HoldCo Third Lien Notes to exercise the call right, in which event the exercise of the NextWave HoldCo call right will be subject to payment of \$25 million by the holders of the HoldCo Third Lien Notes, which payment will be for the benefit of our stockholders; or

the filing by or against us, NextWave Wireless LLC or NextWave HoldCo of a voluntary or involuntary petition under the Bankruptcy Code, in which case all of the limited liability company interests of NextWave HoldCo shall be automatically transferred to the holders of the HoldCo Third Lien Notes in redemption of such notes as of immediately prior to such filing.

Our amended and restated Senior Notes provide for the issuance of up to \$15 million of additional notes for payment of expenses incurred in the ordinary course of operations or in connection with payments to be made in connection with the Merger (the Senior Incremental Notes). The amended and restated Senior Notes accrue interest at an annual rate equal to 15% per annum, except that the Senior Incremental Notes will accrue interest at an annual rate not to exceed 10% per annum.

Our amended and restated Senior Notes contain representations and warranties, affirmative and negative covenants and events of default that are substantially the same as the corresponding provisions of our Senior Notes prior to their amendment and restatement. In addition, the restrictive covenants of the amended and restated Senior Notes were modified to mirror the additional restrictive covenants of the NextWave Third Lien Notes and the HoldCo Third Lien Notes along with an additional restrictive covenant prohibiting the Company from refinancing, modifying or amending the terms of the amended and restated Second Lien Notes, the NextWave Third Lien Notes or the HoldCo Third Lien Notes except in accordance with the terms of that certain Amended and Restated Intercreditor Agreement dated as of August 16, 2012 (the Intercreditor Agreement), among NextWave LLC, the Company, NextWave HoldCo, their respective subsidiaries party thereto, the holders of our amended and restated senior notes, Wilmington Trust, National Association, as collateral agent for the holders of our amended and restated senior notes, the holders of our amended and restated subordinated notes, and Wilmington Trust, National Association, as collateral agent for the holders of our amended and restated subordinated notes, the holders of our NextWave Third Lien Notes and the holders of the HoldCo Third Lien Notes.

Our amended and restated Second Lien Notes accrue interest at an annual rate equal to 15% per annum. The amended and restated Second Lien Notes contain representations and warranties, affirmative and negative covenants and events of default that are substantially the same as the corresponding provisions of our Second Lien Notes prior to their amendment and restatement. In addition, the restrictive covenants of the amended and restated subordinated notes were modified to mirror the additional restrictive covenants of the NextWave Third Lien Notes and the HoldCo Third Lien Notes along with an additional restrictive covenant prohibiting the Company from refinancing, modifying or amending the terms of the amended and restated Senior Notes, the NextWave Third Lien Notes or the HoldCo Third Lien Notes except in accordance with the terms of the Intercreditor Agreement.



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If the Merger Agreement is terminated and if we are unable to further extend the maturity of our secured notes, or identify and successfully implement alternative financing to repay our secured notes, the holders of our Notes could proceed against the assets pledged to collateralize these obligations. These conditions raise substantial doubt about our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court. Any alternative financing and/or maturity extension of our Notes may be costly to obtain, and could involve the issuance of equity securities that could cause significant dilution to our existing stockholders and potentially limit our net operating loss carry forwards.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern and do not include any adjustments that might result from the outcome of this uncertainty. This basis contemplates the recovery of the Company's assets and the satisfaction of liabilities in the normal course of business.

The following table presents our working capital deficit, our cash, cash equivalents and short-term investment balances:

| <i>(in millions)</i>   | September 29,<br>2012 | June 30,<br>2012 | Decrease  | December 31,<br>2011 | Increase<br>(Decrease) |
|--|-----------------------|------------------|-----------|----------------------|------------------------|
| Working capital deficit  | \$ (1,141.4)          | \$ (1,088.1)     | \$ (53.3) | \$ (118.1)           | \$ (1,023.3)           |
| Cash and cash equivalents  | \$ 5.9                | \$ 6.1           | \$ (0.2)  | \$ 11.1              | \$ (5.2)               |
| Marketable securities  |                       | 6.3              | (6.3)     | 10.0                 | (10.0)                 |
| Cash, cash equivalents and marketable securities - continuing operations | 5.9                   | 12.4             | (6.5)     | 21.1                 | (15.2)                 |
| Cash and cash equivalents - discontinued operations                      | 0.6                   | 0.6              |           |                      | 0.6                    |
| Total cash, cash equivalents and marketable securities                   | \$ 6.5                | \$ 13.0          | \$ (6.5)  | \$ 21.1              | \$ (14.6)              |

**Uses of Cash, Cash Equivalents and Short-Term Investments**

The following table presents our utilization of cash, cash equivalents and short-term investments:

| <i>(in millions)</i>   | Three Months Ended    |                    | Nine Months Ended     |                    |
|--|-----------------------|--------------------|-----------------------|--------------------|
|  | September 29,<br>2012 | October 1,<br>2011 | September 29,<br>2012 | October 1,<br>2011 |
| Beginning cash, cash equivalents and marketable securities                       | \$ 13.0               | \$ 28.0            | \$ 21.1               | \$ 42.6            |
| Net operating cash used by continuing operations                                 | (6.4)                 | (4.1)              | (12.5)                | (11.7)             |
| Payments on long-term obligations, excluding wireless spectrum lease obligations |                       |                    |                       | (6.1)              |
| Proceeds from the sale of wireless spectrum licenses, net of selling costs       |                       |                    | 0.3                   | 0.3                |
| Cash paid for wireless spectrum license lease obligations                        | (0.2)                 | (0.2)              | (4.1)                 | (4.0)              |
| Payments to restricted cash account used to redeem long-term obligations         |                       |                    | (0.6)                 |                    |
| Other, net   | 0.1                   | (0.1)              | (0.1)                 | (0.1)              |
| Net operating and investing cash provided by discontinued operations             |                       | 0.1                | 2.4                   | 2.7                |
| Ending cash, cash equivalents and marketable securities                          | 6.5                   | 23.7               | 6.5                   | 23.7               |
| Less: ending cash and cash equivalents - discontinued operations                 | (0.6)                 |                    | (0.6)                 |                    |
| Ending cash, cash equivalents and marketable securities - continuing operations  | \$ 5.9                | \$ 23.7            | \$ 5.9                | \$ 23.7            |

Other than the Forbearance Agreement and the amendments and restatements of our secured notes discussed above, there were no other significant investing or financing activities during the first nine months of 2012.

**CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

Our discussion and analysis of our results of operations and liquidity and capital resources are based on our consolidated financial statements which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and disclosure of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates and judgments, including those related to revenue recognition, valuation of intangible assets and investments, and litigation. We base our estimates on historical and anticipated results and trends and on various other assumptions that we believe are reasonable under the circumstances, including assumptions as to future events. These estimates form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. By their nature, estimates are subject to an inherent degree of uncertainty. Actual results that differ from our estimates could have a significant adverse effect on our operating results and financial position. Our accounting policies are described in more detail in Note 1 to our consolidated financial statements for the year ended December 31, 2011, contained in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 12, 2012.

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***Accounting for Troubled Debt Restructurings***

Upon our August 16, 2012 amended and restated Senior Notes, Second Lien Notes and Third Lien Notes, we first reviewed the amendments to determine if the changes constituted a troubled debt restructuring. A restructuring of a debt constitutes a troubled debt restructuring if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider. A creditor is deemed to have granted a concession if the debtor's effective borrowing rate on the restructured debt, after giving effect to all the terms of the restructured debt, including any new or revised sweeteners, such as the Senior Incremental Notes, is less than the effective borrowing rate of the old debt immediately before the modification.

To determine if the noteholders granted us a concession as a result of the August 2012 amendments and restatements, we determined the respective effective interest rates of the old debt immediately preceding our recent debt modification in December 2011 by using the respective stated interest rates in effect prior to the December 14, 2011 amendments plus the respective effective interest rates used for amortization of discounts and issue costs. We then determined the respective total cash flows under the new terms of each note and solved for the discount rates that equated these cash flows to the respective carrying values of the old Notes immediately preceding our recent debt modification in December 2011.

We determined that concessions were granted for the amended and restated Senior Notes, Second Lien Notes and Third Lien Notes as the effective rates of 14.5%, 14.7% and 18.2%, respectively, were less than that of the old notes prior to our earlier restructuring on December 14, 2011 of 15%, 15% and 36.7%, respectively, and that troubled debt accounting provisions apply. The new effective interest rates for the Senior Notes, Second Lien Notes and Third Lien Notes were determined as the discount rates that equated the present value of the future cash payments specified by the terms of the respective notes with the respective August 16, 2012 carrying amount of the notes, which resulted in effective interest rates of 14.5%, 14.7% and 16.5%, respectively, that equated those used immediately prior to the August 2012 amendments.

**Table of Contents****CONTRACTUAL OBLIGATIONS**

The following table summarizes our cash contractual obligations for continuing and discontinued operations at September 29, 2012, and the effect that such obligations are expected to have on our liquidity and cash flows in future periods.

|  | Total               | Payments Due by Fiscal Year Period |                     |                    | Years<br>2017<br>and<br>Thereafter |
|--|---------------------|------------------------------------|---------------------|--------------------|------------------------------------|
|  |                     | Remainder<br>of<br>2012            | Years<br>2013-2014  | Years<br>2015-2016 |                                    |
| <i>(in thousands)</i>  |                     |                                    |                     |                    |                                    |
| <b>Continuing Operations:</b>                                    |                     |                                    |                     |                    |                                    |
| Long-term obligations:   |                     |                                    |                     |                    |                                    |
| Notes payable <sup>(1)(2)</sup>                                  | \$ 1,146,086        | \$ 153,443                         | \$ 992,643          | \$                 | \$                                 |
| Wireless spectrum leases <sup>(3)</sup>                          | 31,586              | 145                                | 8,736               | 7,515              | 15,190                             |
| Minimum royalty payments on wireless spectrum lease arrangements | 6,641               |                                    | 656                 | 1,376              | 4,609                              |
| Operating leases   | 209                 | 114                                | 95                  |                    |                                    |
|  | 1,184,522           | 153,702                            | 1,002,130           | 8,891              | 19,799                             |
| Discontinued Operations - Services agreement                     | 8,153               |                                    |                     |                    | 8,153                              |
| <b>Total</b>   | <b>\$ 1,192,675</b> | <b>\$ 153,702</b>                  | <b>\$ 1,002,130</b> | <b>\$ 8,891</b>    | <b>\$ 27,952</b>                   |

- (1) Amounts presented do not include the future issuance of additional Senior Notes, Second Lien Notes and Third Lien Notes in payment of interest.
- (2) As required pursuant to the Merger Agreement, the holders of the Notes amended and restated the Notes and amended certain documents ancillary to the Notes on August 16, 2012. Our Third Lien Notes were split into two series whereby certain of our Third Lien Notes remain direct obligations of the Company and the remaining principal balance of our Old Third Lien Notes became the direct obligations of NextWave HoldCo LLC, a new subsidiary that we formed on August 8, 2012, under the laws of the State of Delaware ( NextWave HoldCo ). Specifically, the parties have agreed that \$325 million of the Company's outstanding obligations under the Old Third Lien Notes remain the Company's direct obligations ( NextWave Third Lien Notes ) and the remaining principal balance of the Old Third Lien Notes plus accrued and unpaid interest as of the date the Third Lien Notes became the direct obligations of NextWave HoldCo ( HoldCo Third Lien Notes ).

The amended and restated Senior Notes provide for the issuance of up to \$15 million of additional notes (the Senior Incremental Notes ) for payment of expenses incurred in the ordinary course of operations or in connection with payments to be made in connection with the merger. The amended and restated Senior Notes accrue interest at an annual rate equal to 15% per annum and the Senior Incremental Notes will accrue interest at an annual rate not to exceed 10% per annum.

In connection with the amendment and restatement of our Notes, NextWave HoldCo became the direct or indirect parent of our subsidiaries that hold certain of our assets and liabilities, other than our U.S. WCS and AWS spectrum assets, including our Canadian WCS spectrum and 2.5 MHz EBS/BRS spectrum assets.

In connection with the amended and restated Notes, NextWave LLC and NextWave HoldCo entered into a Call Option/Note Redemption Agreement (the Call Agreement ), whereby, immediately prior to the consummation of the Merger, we will redeem the outstanding amount of the HoldCo Third Lien Notes for all of the limited liability company interests in NextWave HoldCo. In addition, the holders of the HoldCo Third Lien Notes, upon termination of the Merger Agreement, may elect to pay \$25.0 million for the benefit of our stockholders, and redeem the HoldCo Third Lien Notes in exchange for all of the limited liability company interests of NextWave HoldCo. In the event a filing by or against the Company, NextWave LLC or NextWave HoldCo of a voluntary or involuntary petition under the Bankruptcy Code, all of the limited liability company interests of NextWave HoldCo shall be automatically transferred to the holders of the HoldCo Third Lien Notes in redemption of such notes as of immediately prior to such filing. The exercise of the call right as described above is subject to the receipt of any required regulatory approvals and the terms of the Call Agreement.

- (3) Amounts presented do not include adjustments for future changes in the consumer price index.

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### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Not applicable.

### **Item 4. Controls and Procedures**

#### **Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act), that are designed to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required financial disclosures. Because of inherent limitations, our disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of such disclosure controls and procedures are met.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this Quarterly Report.

#### **Changes in Internal Control over Financial Reporting**

There have been no changes in our internal control over financial reporting during the quarterly period ended September 29, 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **ITEM 1. Legal Proceedings**

On September 16, 2008, a putative class action lawsuit, captioned Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants, was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned Benjamin et al. v. NextWave Wireless Inc. et al. was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint, and we subsequently filed a Motion to Dismiss. On March 16, 2011, the Court granted our Motion and dismissed the complaint without prejudice. On May 5, 2011, the lead plaintiff filed a Third Amended Complaint, and we again filed a Motion to Dismiss. On November 21, 2011, the Court granted our Motion and dismissed the case with prejudice. On December 19, 2011, the lead plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. We and our insurance carrier have agreed with the lead plaintiff on the final terms of a settlement. The settlement provides for a full release and dismissal of all claims asserted against all defendants in the litigation and the appeal, in exchange for payment of \$1.4 million by our insurance carrier. The settlement is subject to court approval following notice to the potential class members. The Court of Appeals dismissed the appeal on June 25, 2012 and the case has been returned to the district court for the approval process. The district court has approved the application for preliminary approval of the settlement and the final approval hearing is scheduled for November 9, 2012. We continue to maintain the D&O and corporate liability insurance covering certain risks associated with securities claims filed against us or our directors and officers, as described above, with insurance from multiple carriers, each insuring a different layer of exposure, up to a total of \$50 million. We have accrued for liabilities equal to the financial deductible of our D&O policy for the period covering the time the class action lawsuit for this matter was filed. Other than accruing for our financial deductible, we have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability in excess of our insurance coverage, while possible, is not probable.

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On August 5, 2012, the Company became aware that the liquidator in the Go Networks (Israel) Ltd. bankruptcy, which was filed in Tel Aviv in September 2008, purportedly made a claim against the Company for damages alleging that the Company contributed to the demise of and failed to sufficiently fund its former subsidiary Go Networks (Israel) Ltd. While the Company believes that the liquidator's claims are without merit, the Company cannot yet estimate the amount of legal fees and damages, if any, that could be awarded in connection with such claims.

On August 31, 2012, a putative class action lawsuit was filed in the Court of Chancery of the State of Delaware against the Company, AT&T, Merger Sub, Allen Salmasi, Douglas F. Manchester, Jack Rosen, Nadar Tavakoli, Carl E. Vogel and William H. Webster alleging, among other things, that the Company's board of directors and certain of its executive officers breached various fiduciary duties in connection with the board of directors' approval of the proposed Merger and that the

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Company, AT&T and Merger Sub aided and abetted such alleged breaches of fiduciary duties. The plaintiff seeks injunctive relief preventing the Merger, an order rescinding the proposed Merger in the event it is not enjoined, and damages as a result of the alleged actions of the defendants, including attorneys' and experts' fees (the foregoing, the Weiss Action). Subsequently, on September 6, 2012, two additional complaints were filed in the Superior Court of California, County of San Diego by Thomas Juzwik and Elias Rodriguez against the Company, AT&T, Merger Sub, Allen Salmasi, Jack Rosen, William Webster, Douglas F. Manchester, Robert Symington, Frank Cassou and Francis Harding, containing substantially similar allegations to those set forth in the Weiss Action. We collectively refer to the Juzwik, Rodriguez and Weiss actions as, the actions.

In order to avoid the costs, risks and uncertainties inherent in litigation and to allow stockholders to vote on the proposal to adopt the Merger Agreement at the scheduled special meeting, the Company and the other defendants entered into a memorandum of understanding (the Memorandum of Understanding) with plaintiffs' counsel on September 20, 2012 in connection with the actions, pursuant to which the Company, the other named defendants and the plaintiffs have agreed to settle the actions subject to court approval. If the Delaware court approves the settlement, the Weiss action will be dismissed with prejudice and the plaintiffs in the Juzwik and Rodriguez actions will dismiss their complaints based on the settlement of the Weiss action. We continue to maintain the D&O and corporate liability insurance covering certain risks associated with securities claims filed against us or our directors and officers, as described above, with insurance from multiple carriers, each insuring a different layer of exposure, up to a total of \$50 million. We have accrued for liabilities equal to the financial deductible of our D&O policy for the period covering the time the class action lawsuit for this matter was filed. Other than accruing for our financial deductible, we have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability in excess of our insurance coverage, while possible, is not probable.

We are also currently involved in other legal proceedings, which we do not believe will result in a material liability. We estimate the range of liability related to pending litigation where the amount and range of loss can be estimated. We record our best estimate of a loss when the loss is considered probable. Where a liability is probable and there is a range of estimated loss with no best estimate in the range, we record the minimum estimated liability related to the claim. As additional information becomes available, we assess the potential liability related to our pending litigation and revise our estimates. As of September 29, 2012, other than accrual for the financial deductible described above, we have not recorded any significant accruals for contingent liabilities associated with our legal proceedings based on our belief that a liability, while possible, is not probable. Further, any possible range of loss cannot be estimated at this time. Revisions to our estimate of the potential liability could materially impact future results of operations.

### **ITEM 1A. Risk Factors**

Our business involves a high degree of risk. You should carefully consider the following risks together with all of the other information contained in this Quarterly Report and our other filings with the SEC before making a future investment decision with respect to our securities. If any of the following risks actually occurs, our business, financial condition and results of operations could be materially adversely affected, and the value of our securities could substantially decline.

#### **Risks Relating to Our Business**

##### ***There are risks and uncertainties associated with our proposed acquisition by AT&T.***

There are risks and uncertainties associated with our proposed acquisition by AT&T. For example, the acquisition may not be consummated, or may not be consummated when or as currently anticipated, as a result of several factors, including but not limited to: (i) the inability to obtain approval by the FCC; or (ii) the failure to satisfy the other conditions for closing set forth in the Merger Agreement. Further, if the Merger Agreement is terminated, the temporary forbearance agreed to by the holders of the Notes will expire sixty (60) days after such termination and we would not have sufficient cash reserves to meet the payment obligations under our secured notes at their current maturity dates. In addition, if the Merger Agreement is terminated, holders of 75% or more of the HoldCo Third Lien Notes may exercise the call right to cause us to redeem the HoldCo Third Lien Notes in exchange for 100% of the equity of NextWave HoldCo pursuant to the Call Agreement, in which event the exercise of the NextWave HoldCo call right will be subject to payment of \$25 million by the holders of the HoldCo Third Lien Notes, which payment will be for the benefit of our stockholders.

The Merger Agreement also restricts us from engaging in certain activities and taking certain actions without AT&T's approval, which could prevent us from pursuing opportunities that may arise prior to the closing of the acquisition.

In addition, we have incurred, and will continue to incur, significant fees for professional services and other transaction costs in connection with the proposed acquisition by AT&T, and many of these fees and costs are payable by us regardless of whether we consummate the transaction.



***Our cash reserves will not be sufficient to meet the payment obligations under our secured notes at their current maturity dates and in the event of any termination of the Merger Agreement there can be no assurance that a further maturity extension or refinancing transaction will be achieved. Any maturity extension or refinancing transaction may involve significant cost, including the accrual of payment-in-kind interest for an extended term which will increase our aggregate amount of indebtedness.***

As of September 29, 2012, the aggregate principal amount of our secured indebtedness was \$1,146 million. This amount includes our Senior Notes with an aggregate principal amount of \$153.4 million, our Second Lien Notes with an aggregate principal amount of \$215.7 million and our NextWave and HoldCo Third Lien Notes with aggregate principal amounts of \$331.4 million and \$445.5 million, respectively. Our current cash reserves are not sufficient to meet our payment obligations under our Senior Notes, Second Lien Notes, NextWave Third Lien Notes and HoldCo Third Lien Notes at their current maturity dates. Additionally, in the event of any termination of the Merger Agreement, we will not be able to consummate the sale of our wireless spectrum assets yielding sufficient proceeds to retire this indebtedness at their currently scheduled maturity dates. If we are unable to further extend the maturity of our Notes, or identify and successfully implement alternative financing to repay the Notes, the holders of our Notes could proceed against the assets pledged to collateralize these obligations in the event the Merger Agreement is terminated and our forbearance agreement expires. These conditions raise substantial doubt about our ability to continue as a going concern. Insufficient capital to repay our debt at maturity would significantly restrict our ability to operate and could cause us to seek relief through a filing in the United States Bankruptcy Court.

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Any alternative financing and/or maturity extension of our Notes may be costly to obtain, could involve the issuance of equity securities that could cause significant dilution to our existing stockholders, and, if successful, will result in a greater aggregate amount of indebtedness due at maturity resulting from the accrual of payment-in-kind interest for the extended term.

***Because we currently do not have the ability to repay our debt at maturity, there is substantial doubt as to our ability to continue as a going concern, and our independent registered public accounting firm has included an explanatory paragraph highlighting this uncertainty in its report dated March 12, 2012.***

A failure to obtain a maturity extension or refinancing transaction in the event of any termination of the Merger Agreement could cause the Company to seek relief through a filing in the United States Bankruptcy Court. In the event of a default, the holders of our Notes could proceed against the assets pledged to collateralize these obligations, which include the Company's spectrum assets and the capital stock of its material subsidiaries. Our financial statements are prepared on a going concern basis, which assumes continuity of operations and realization of assets and satisfaction of liabilities in the ordinary course of business. Our financial statements do not include any adjustments related to the recovery of assets and classification of liabilities that might be necessary should we be unable to continue as a going concern. Our ability to continue as a going concern is predicated upon our ability to obtain a maturity extension or refinancing of our debt, or to consummate asset sales yielding net proceeds sufficient to retire our debt.

***In the event of any termination of the Merger Agreement, the value of our equity securities would be dependent on our ability to achieve a maturity extension or refinancing transaction and ultimately successfully retire our debt using the net proceeds of asset sales. We believe the value of our equity securities will be significantly impaired or eliminated in the event of any termination of the Merger Agreement.***

In the event of any termination of the Merger Agreement, if we complete a refinancing transaction or obtain a maturity extension, the aggregate amount of our secured debt will be increased due to accrued payment-in-kind interest for the extended term to maturity. If the Merger Agreement is terminated, there can be no assurance that we will be able to find third parties interested in purchasing our wireless spectrum assets at prices sufficient to retire this debt prior to maturity, even if extended. If we are unable to consummate sales of our wireless spectrum assets for net proceeds that are sufficient to retire our indebtedness, the value of our equity securities will be significantly impaired or eliminated. The sale price of our wireless spectrum assets will be impacted by many factors beyond our control including, among other things:

the FCC's new technical rules relating to the operation of satellite digital audio radio services and services using our WCS spectrum licenses;

the timing and allocated costs of build-out or substantial service requirements attached to our domestic and international spectrum licenses, where a failure to comply with these requirements could result in license forfeiture;

timing of closure of potential sales, particularly if it is necessary to accelerate the planned sale of certain of our spectrum licenses in order to meet debt payment obligations if we are not able to obtain a maturity extension;

worldwide economic conditions, which we believe have adversely affected manufacturers of telecommunications equipment and technology and led to a delay in global network deployments;

timing and the availability of standardized technology and equipment that is able to operate in our licensed and leased spectrum;

availability of wireless spectrum in the United States in particular, which could be affected by potential government auctions of spectrum not previously available in the market; and

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availability of capital for prospective spectrum bidders, which has been negatively impacted by the downturn in the credit and financial markets.

If we are unable to consummate sales of our wireless spectrum assets that are sufficient to retire our indebtedness, the holders of our Notes could proceed against the assets pledged to collateralize these obligations, which include our spectrum assets and the capital stock of our material subsidiaries, which would impair our ability to continue as a going concern and the value of our equity securities would be impaired or eliminated.

***We are highly leveraged and our operating flexibility will be significantly reduced by our debt covenants.***

As of September 29, 2012, the aggregate principal amount of our secured indebtedness was \$1,146 million. This amount includes our Senior Notes with an aggregate principal amount of \$153.4 million, our Second Lien Notes with an aggregate principal amount of \$215.7 million and our NextWave and HoldCoThird Lien Notes with aggregate principal amounts of \$331.4 million and \$445.5 million, respectively. Covenants in the purchase agreements for our Senior Notes and Second Lien Notes impose operating and financial restrictions on us. These restrictions prohibit or limit our ability, and the ability of our subsidiaries, to, among other things:

pay dividends to our stockholders;

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incur, or cause to incur, additional indebtedness or incur liens;

sell assets for consideration other than cash or for net proceeds less than our cost basis;

consolidate or merge with or into other companies;

issue shares of our common stock or securities of our subsidiaries;

make capital expenditures or other strategic investments in our business not contemplated by our operating budget; or

acquire assets or make investments.

We anticipate that our overall level of indebtedness and covenant restrictions will:

limit our ability to pursue business opportunities;

render us more vulnerable to general adverse economic, regulatory and industry conditions; and

require us to dedicate proceeds from asset sales to service our debt.

A breach of any covenants contained in the agreements governing our Notes could result in a default under our indebtedness. If we are unable to repay or refinance those amounts, the holders of our notes could proceed against the assets pledged to collateralize these obligations, which include our spectrum assets and substantially all of our other assets.

***We have become and may continue to be the target of securities class action suits and derivative suits which could result in substantial costs and divert management attention and resources.***

We are subject to a securities class action suit and derivative suits, which may result in substantial costs to us and divert the attention of our management.

On September 16, 2008, a putative class action lawsuit, captioned Sandra Lifschitz, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. NextWave Wireless Inc. et al., Defendants, was filed in the U.S. District Court for the Southern District of California against us and certain of our officers. The suit alleges that the defendants made false and misleading statements and/or omissions in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The suit seeks unspecified damages, interest, costs, attorneys' fees, and injunctive, equitable or other relief on behalf of a purported class of purchasers of our common stock during the period from March 30, 2007 to August 7, 2008. A second putative class action lawsuit captioned Benjamin et al. v. NextWave Wireless Inc. et al. was filed on October 21, 2008 alleging the same claims on behalf of purchasers of our common stock during an extended class period, from November 27, 2006 through August 7, 2008. On February 24, 2009, the Court issued an Order consolidating the two cases and appointing a lead plaintiff pursuant to the Private Securities Litigation Reform Act. On May 15, 2009, the lead plaintiff filed an Amended Complaint, and on June 29, 2009, we filed a Motion to Dismiss that Amended Complaint. On March 5, 2010, the Court granted our Motion to Dismiss without prejudice, permitting the lead plaintiff to file an Amended Complaint. On March 26, 2010, the lead plaintiff filed a Second Amended Consolidated Complaint, and we subsequently filed a Motion to Dismiss. On March 16, 2011, the Court granted our Motion and dismissed the complaint without prejudice. On May 5, 2011, the lead plaintiff filed a Third Amended Complaint, and we again filed a Motion to Dismiss. On November 21, 2011, the Court granted our Motion and dismissed the case with prejudice. On December 19, 2011, the lead plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeals. We and our insurance carrier have agreed with the lead plaintiff on the final terms of a settlement. The settlement



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provides for a full release and dismissal of all claims asserted against all defendants in the litigation and the appeal, in exchange for payment of \$1.4 million by our insurance carrier. The settlement is subject to court approval following notice to the potential class members. The Court of Appeals dismissed the appeal on June 25, 2012 and the case has been returned to the district court for the approval process. The district court has approved the application for preliminary approval of the settlement and the final approval hearing is scheduled for November 9, 2012. We have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability, while possible, is not probable.

On August 31, 2012, a putative class action lawsuit was filed in the Court of Chancery of the State of Delaware against the Company, AT&T, Merger Sub, Allen Salmasi, Douglas F. Manchester, Jack Rosen, Nadar Tavakoli, Carl E. Vogel and William H. Webster alleging, among other things, that the Company's board of directors and certain of its executive officers breached various fiduciary duties in connection with the board of directors' approval of the proposed Merger and that the Company, AT&T and Merger Sub aided and abetted such alleged breaches of fiduciary duties. The plaintiff seeks injunctive relief preventing the Merger, an order rescinding the proposed Merger in the event it is not enjoined, and damages as a result of the alleged actions of the defendants, including attorneys' and experts' fees (the foregoing, the Weiss Action). Subsequently, on September 6, 2012, two additional complaints were filed in the Superior Court of California, County of San Diego by Thomas Juzwik and Elias Rodriguez against the Company, AT&T, Merger Sub, Allen Salmasi, Jack Rosen, William Webster, Douglas F. Manchester, Robert Symington, Frank Cassou and Francis Harding, containing substantially similar allegations to those set forth in the Weiss Action. We collectively refer to the Juzwik, Rodriguez and Weiss actions as, the actions.

In order to avoid the costs, risks and uncertainties inherent in litigation and to allow stockholders to vote on the proposal to adopt the Merger Agreement at the scheduled special meeting, the Company and the other defendants entered into a memorandum of understanding (the Memorandum of Understanding) with plaintiffs' counsel on September 20, 2012 in connection with the actions, pursuant to which the Company, the other named defendants and the plaintiffs have agreed to settle the actions subject to court approval. If the Delaware court approves the settlement, the Weiss action will be dismissed with prejudice and the plaintiffs in the Juzwik and Rodriguez actions will dismiss their complaints based on the settlement of the Weiss action. We have not recorded any significant accruals for contingent liabilities associated with this matter based on our belief that a liability, while possible, is not probable.

***Our common stock is no longer traded on The Nasdaq Global Market ( Nasdaq ) or any national securities exchange, and investors no longer have the benefit of certain exemptions from state securities laws governing resales, liquidity benefits and governance protections afforded by a Nasdaq (or other national securities exchange) listing.***

As a result of our delisting from Nasdaq in July 2010, we are not currently subject to its corporate governance requirements and investors may not have the same protections as are afforded to stockholders of companies listed on Nasdaq. For example, we are no longer required to maintain a majority of independent directors on our Board of Directors. Delisting from Nasdaq may also result in increased obligations under state securities laws and decreased coverage by securities analysts.

Our common stock is quoted on the OTCQB, an over-the-counter electronic quotation service operated by Pink OTC Markets Inc. Markets operated by Pink OTC Markets Inc. are generally regarded as less efficient and liquid than Nasdaq. The ability to trade our common stock on the OTCQB depends on the presence and investment decisions of willing buyers and sellers. Accordingly, if an active and liquid trading market price for our common stock does not develop or, if developed, does not continue, the market price of our common stock will be adversely affected. In addition, because we are no longer listed on Nasdaq, sales of our common stock by brokers in certain states may be limited or prohibited pending completion of registration filings required under state securities laws.

Trading in our common stock may be subject to the requirements of certain rules promulgated by the SEC under the Securities Exchange Act of 1934, which require additional disclosure by broker-dealers in connection with any trade involving a stock defined as a penny stock. A penny stock is any equity security that has a market price per share of less than \$5.00, subject to certain exceptions, such as any securities listed on a national securities exchange. Additional disclosure burdens relating to penny stocks imposed upon broker-dealers by the SEC requirements could discourage broker-dealers from facilitating trades in our common stock, which could further limit the market liquidity of our stock and the ability of investors to trade our common stock.

### **Risks Relating to Government Regulation**

***If we do not comply with build-out requirements relating to our domestic spectrum licenses, such licenses could be subject to forfeiture.***

Certain build-out or substantial service requirements apply to our licensed wireless spectrum, which generally must be satisfied as a condition of the license and/or license renewal. In particular, for our domestic WCS spectrum, there are two substantial service build-out deadlines of 48 and 78 months after the effective date of new rules adopted by the FCC on October 17, 2012; and for our domestic AWS spectrum, the substantial

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service build-out deadline is December 18, 2021. Failure to make the substantial service demonstration domestically, without seeking and obtaining an extension from the FCC, would result in forfeiture of the affected license.

The substantial service deadline for our domestic WCS spectrum was July 21, 2010 under the FCC rules effective at that time. However, the FCC adopted new rules on May 20, 2010, that, when they became effective on September 1, 2010, purported

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to replace the July 21, 2010 substantial service requirement with new requirements that must be met by March 4, 2014 and additional requirements that must be met by September 1, 2016. We filed substantial service showings with the FCC on July 20, 2010 for all of our WCS licenses under the rules then in effect. The FCC dismissed them on June 14, 2011 in accordance with June 2010 announcement that all substantial service showings would be dismissed given the new performance requirements it had adopted. On October 17, 2012, the FCC adopted revisions to the May 2010 rules, further extending the build-out deadlines for the WCS licenses to 48 and 78 months after the effective date of the new rules, which has not yet occurred. Failure to make the substantial service demonstrations by the new deadlines without seeking and obtaining an extension from the FCC would result in license forfeiture.

AWS licensees must comply with all applicable legal and technical rules imposed by the FCC, including those found in Part 27 of Title 47 of the CFR. All of our AWS licenses are granted for a 15-year license term, with a renewal term of ten years. AWS licensees are required to demonstrate that they are providing substantial service in their license area within the initial 15-year license term. For our AWS licenses, the renewal deadline and the substantial service build-out deadline is December 18, 2021. Failure to make the substantial service demonstration, without seeking and obtaining an extension from the FCC, would result in license forfeiture.

The AWS spectrum includes a large number of incumbent federal government and non-government operations that must be relocated to other spectrum. AWS licensees are required to coordinate their operations to avoid interfering with these incumbent stations until relocation is complete. A small number of these incumbent stations must be protected indefinitely. In certain cases, the AWS licensee must pay for the relocation of incumbent stations within the AWS licensee's license area. AWS licensees are effectively prohibited from deploying time-division duplex (TDD) systems in the AWS spectrum. These requirements could affect the value of our AWS spectrum.

The FCC's rules for meeting the substantial service requirements are written generally so as to enable flexibility in providing service. However, because the rules are subject to interpretation, the FCC has discretion in determining if the substantial service showing is adequate to meet the rules and there is a risk that the FCC may not approve our substantial service showing and any of our licenses that did not meet the substantial service requirement would then be subject to non-renewal.

***If we do not comply with build-out requirements relating to our Canadian spectrum licenses, such licenses could be subject to forfeiture.***

In Canada, our 2.3 GHz licenses were subject to mid-term in-use demonstration requirements by November 2012 and April 2013 for 59 and 24 of our licenses which are subject to renewal in November of 2014 and April of 2015, respectively. On March 29, 2012, the Canadian regulatory authority, Industry Canada, granted an extension of two years, resulting in new in-use demonstration deadlines of November 2014 and April 2015. On October 18, 2012, Industry Canada released a public consultation seeking input on whether and how to extend further the in-use demonstration deadlines for the WCS licenses.

In order for us to operate our Canadian spectrum under the current Canadian ownership rules, we will need a Canadian-controlled partner. Similar to the U.S., Canada has allocated the 2.3 GHz band for both SDARS and mobile broadband uses, which necessitates the adoption of technical rules to protect against interference between the two uses. Canada has recently begun the process of developing such technical rules for the band. Until the technical rules are final, which in turn will allow the development of manufacturing standards for vendors to use to produce readily available commercial mobile equipment, deployment in the band for mobile services cannot occur. There can be no assurance that: 1) we will find a Canadian-controlled partner who will be able to provide a viable business plan and attract appropriate financing by the build out deadline, or 2) that the new ownership rules will enable us to develop a viable business plan and attract appropriate financing by the build out deadline. Failure to make the in-use demonstrations for each of our licenses, in the absence of an extension by Industry Canada, could result in Industry Canada commencing a process to afford us the opportunity to demonstrate why the applicable licenses should not be revoked.

***Our use of EBS spectrum is subject to privately negotiated lease agreements. Changes in FCC rules governing such lease agreements, contractual disputes with EBS licensees, or failures by EBS licensees to comply with FCC rules could impact our use of the EBS spectrum.***

With few exceptions, commercial enterprises are restricted from holding licenses for EBS spectrum. Eligibility for EBS spectrum is limited to accredited educational institutions, governmental organizations engaged in the formal education of enrolled students (e.g., school districts), and nonprofit organizations whose purposes are educational. Access to EBS spectrum can only be gained by commercial enterprises through privately negotiated EBS lease agreements. FCC regulation of EBS leases, private interpretation of EBS lease terms, private contractual disputes, and failure of an EBS licensee to comply with FCC regulations all could impact our use of EBS spectrum and the value of our leased EBS spectrum. The FCC rules permit EBS licensees to enter into lease agreements with a maximum term of 30 years; lease agreements with terms longer than 15 years must contain a right of review by the EBS licensee every five years beginning in year 15. The right of review must afford the EBS licensee with an opportunity to review its educational use requirements in light of changes in educational needs, technology, and other relevant factors and to obtain access to such additional services, capacity, support, and/or equipment as the parties shall agree upon in the spectrum leasing arrangement to advance the EBS licensee's educational mission. A spectrum leasing arrangement may include any mutually agreeable terms designed to accommodate changes in the EBS licensee's educational use requirements and the commercial lessee's wireless



broadband operations. In addition, the terms of EBS lease agreements are subject to contract

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interpretation and disputes could arise with EBS licensees. There can be no assurance that EBS leases will continue for the full lease term, or be extended beyond the current term, or be renewed or extended on terms that are satisfactory to us, or at all. Similarly, since we are not eligible to hold EBS licenses, we must rely on EBS licensees with whom we contract to comply with FCC rules. The failure of an EBS licensee from whom we lease spectrum to comply with the terms of their FCC authorization or FCC rules could result in termination, forfeiture or non-renewal of their authorization, which would negatively impact the amount of spectrum available for our use.

### ***We have no guarantee that the licenses we hold or lease will be renewed.***

The FCC generally grants wireless licenses for terms of ten or 15 years, and such licenses are subject to renewal and revocation. FCC rules require all wireless licensees to comply with applicable FCC rules and policies and the Communications Act of 1934, as amended (the Communications Act), in order to retain their licenses. For example, licensees must meet certain construction requirements, including making substantial service demonstrations, in order to retain and renew FCC licenses. Failure to comply with FCC requirements with respect to any license could result in revocation or non-renewal of a license. In general, most wireless licensees who meet their construction and/or substantial service requirements are afforded renewal expectancy; however, all FCC license renewals can be challenged in various ways, regardless of whether such challenges have any legal merit. Under FCC rules, licenses continue in effect during the pendency of timely filed renewal applications. Challenges to license renewals, while uncommon, may impact the timing of renewal grants and may impose legal costs. Accordingly, there is no guarantee that licenses we hold or lease will remain in full force and effect or be renewed.

We hold 30 licenses issued by the FCC for WCS spectrum. Renewal applications for all 2.3 GHz WCS licenses, including those issued to us, were due to be filed with the FCC on July 21, 2007. We filed our WCS renewal applications on April 23, 2007. Under FCC rules, licenses continue in effect during the pendency of timely filed renewal applications. We are aware of three parties that made filings purporting to be competing applications in response to the renewal applications that we, AT&T, and others filed. The basis on which the third-party filings were made was the alleged failure of WCS licensees to deploy service on WCS spectrum and satisfy substantial service requirements by July 21, 2007. However, on December 1, 2006, the FCC issued a waiver order extending the substantial service deadline for WCS licensees to July 21, 2010. The FCC's rules contain no procedures for processing competing applications filed for WCS spectrum and the FCC has not accepted them for filing. The FCC granted all pending WCS license renewal applications, including those that we filed in April of 2007. However, the grant of these applications was conditioned on the outcome of an ongoing FCC rulemaking proceeding regarding wireless license renewal procedures in which the FCC has proposed to dismiss all pending competing applications. There can be no assurance of how the FCC will ultimately treat the competing applications or the WCS license renewal applications.

Industry Canada, Canada's spectrum regulatory body, has similar rules and policies to those of the FCC and therefore the requirements for retention and renewal and the risks of revocation are similar to those stated above. For example, as in the U.S., licensees of Canadian spectrum must comply with construction requirements in order to retain their licenses. Our 83 Canadian licenses each have a 10 year term, 59 of which expire in November 2014 and 24 of which expire in April 2015.

### ***Interference could negatively impact our use of wireless spectrum we hold, lease or use.***

Under applicable FCC and equivalent international rules, users of wireless spectrum must comply with technical rules that are intended to eliminate or diminish harmful radiofrequency interference between wireless users. Licensed spectrum is generally entitled to interference protection, subject to technical rules applicable to the radio service, while unlicensed spectrum has no interference protection rights and may be subject to interference caused by other users.

### ***Wireless devices utilizing WCS, BRS and EBS spectrum may be susceptible to interference from Satellite Digital Audio Radio Services (SDARS).***

Since 1997, the FCC has considered a proposal to permanently authorize terrestrial repeaters for SDARS operations adjacent to the C and D blocks of the WCS band. The FCC has permitted a large number of these SDARS terrestrial repeaters to operate on a special temporary authorization since 2001. Permanently authorizing SDARS repeaters adjacent to the WCS band could cause interference to WCS, BRS and EBS receivers. The extent of the interference from SDARS repeaters is unclear and will depend on the effectiveness of the new rules adopted by the FCC on October 17, 2012 (as further described below) and the operation of SDARS equipment under the new rules. Because WCS C and D block licenses are adjacent to the SDARS spectrum, the potential for interference to this spectrum is of greatest concern to us. We have a lesser magnitude concern regarding interference from SDARS to WCS A and B block licenses, and BRS and EBS licenses. The FCC adopted new technical rules on October 17, 2012, which have not yet become effective, to govern WCS and SDARS operations. Operation of both WCS and SDARS equipment under the new rules could result in interference to our WCS, BRS or EBS spectrum, which could impair the value of this spectrum.

*Increasing regulation of the tower industry may make it difficult to deploy new towers and antenna facilities, which could adversely affect the value of certain of our wireless spectrum assets.*

Our wireless operations are dependent upon access to towers and antenna sites which are subject to national, state and local regulatory requirements related to registration, zoning, siting, lighting, marking, environmental impacts and maintenance. Network service, enhancements to service and product launches can be delayed or made more expensive due to compliance with these regulatory requirements.

**Table of Contents****ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

**ITEM 3. Default Upon Senior Securities**

None.

**ITEM 4. Mine Safety Information**

Not Applicable.

**ITEM 5. Other Information**

None.

**ITEM 6. Exhibits**

| Exhibit No. | Description  |
|-------------|--|
| 4.1         | Amended and Restated Purchase Agreement, dated as of August 16, 2012, by and among NextWave Wireless Inc., NextWave Wireless LLC, AWS Wireless Inc., NextWave Broadband Inc., NW Spectrum Co. and NextWave Metropolitan, Inc., certain other guarantors named therein, certain purchasers named therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).                             |
| 4.2         | Amended and Restated Second Lien Subordinated Note Purchase Agreement, dated as of August 16, 2012, by and among NextWave Inc., NextWave Wireless LLC, AWS Wireless Inc., NextWave Broadband Inc., NW Spectrum Co. and NextWave Metropolitan, Inc., certain other guarantors named therein, certain purchasers named therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).        |
| 4.3         | Amended and Restated Spinco Third Lien Subordinated Exchange Agreement, dated as of August 16, 2012, by and among NextWave Holdco LLC, NextWave Wireless LLC, AWS Wireless Inc., NextWave Broadband Inc., NW Spectrum Co. and NextWave Metropolitan, Inc., certain other guarantors named therein, certain purchasers named therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012). |
| 4.4         | Amended and Restated Parent Third Lien Subordinated Exchange Agreement, dated as of August 16, 2012, by and among NextWave Inc., NextWave Wireless LLC, AWS Wireless Inc., NextWave Broadband Inc., NW Spectrum Co. and NextWave Metropolitan, Inc., certain other guarantors named therein, certain purchasers named therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).       |
| 10.1        | Counterpart for Additional Guarantors dated August 16, 2012, by NextWave Holdco LLC and NextWave Metropolitan Inc. (Amended and Restated First Lien Notes) (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).   |
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| 10.3        | Amended and Restated Parent Third Lien Guaranty, dated as of August 16, 2012, by and among NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, Additional Guarantors as defined therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).   |
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- 10.5 Amended and Restated Pledge and Security Agreement, dated as of August 16, 2012, by and among NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, Additional Guarantors as defined therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).
- 10.6 Amended and Restated Second Lien Pledge and Security Agreement, dated as of August 16, 2012, by and among NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, Additional Guarantors as defined therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).

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|         |  |
|---------|--|
| 10.7    | Amended and Restated Parent Third Lien Pledge and Security Agreement, dated as of August 16, 2012, by and among Spinco Sub, NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, Additional Guarantors as defined therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).  |
| 10.8    | Amended and Restated Spinco Third Lien Pledge and Security Agreement, dated as of August 16, 2012, by and among Spinco Sub, NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, Additional Guarantors as defined therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).  |
| 10.9    | Amended and Restated Intercreditor Agreement dated as of August 16, 2012, among NextWave Wireless LLC, NextWave Wireless Inc., NextWave Holdco LLC, their respective subsidiaries party thereto, the First Lien Note Holders party thereto, Wilmington Trust, National Association, as collateral agent for the First Lien Note Holders, the Second Lien Note Holders party thereto, Wilmington Trust, National Association, as collateral agent for the Second Lien Note Holders, the Parent Third Lien Note Holders party thereto, the Spinco Third Lien Note Holders party thereto, and Wilmington Trust, National Association, as collateral agent for the Parent Third Lien Note Holders and the Spinco Third Lien Note Holders (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012). |
| 10.10   | Call Option/Note Redemption Agreement, dated as of August 16, 2012, among NextWave Wireless LLC, NextWave Holdco LLC, Wilmington Trust, National Association, as noteholder representative and the parties listed on Schedule A attached thereto (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).   |
| 31.1    | Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Frank Cassou.  |
| 31.2    | Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Francis J. Harding.  |
| 32.1    | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, for Frank Cassou.  |
| 32.2    | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, for Francis J. Harding.  |
| 101.INS | XBRL Instance Document*  |
| 101.SCH | XBRL Taxonomy Extension Schema Document*   |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase document*   |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase document*  |
| 101.LAB | XBRL Taxonomy Extension Label Linkbase document*   |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase document*  |

\* Users of this data are advised that pursuant to Rule 406T of Regulation S-T, this XBRL information is being furnished and not filed herewith for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and Sections 11 or 12 of the Securities Act of 1933, as amended, and is not to be incorporated by reference into any filing, or part of any registration statement or prospectus, of NextWave Wireless Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

November 5, 2012  
(Date)

**NEXTWAVE WIRELESS INC.** (Registrant)

By: /s/ Francis J. Harding  
Francis J. Harding  
Executive Vice President and  
Chief Financial Officer

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| <b>Exhibit No.</b> | <b>Description</b>   |
|--------------------|--|
| 4.1                | Amended and Restated Purchase Agreement, dated as of August 16, 2012, by and among NextWave Wireless Inc., NextWave Wireless LLC, AWS Wireless Inc., NextWave Broadband Inc., NW Spectrum Co. and NextWave Metropolitan, Inc., certain other guarantors named therein, certain purchasers named therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).                             |
| 4.2                | Amended and Restated Second Lien Subordinated Note Purchase Agreement, dated as of August 16, 2012, by and among NextWave Inc., NextWave Wireless LLC, AWS Wireless Inc., NextWave Broadband Inc., NW Spectrum Co. and NextWave Metropolitan, Inc., certain other guarantors named therein, certain purchasers named therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).        |
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| 10.1               | Counterpart for Additional Guarantors dated August 16, 2012, by NextWave Holdco LLC and NextWave Metropolitan Inc. (Amended and Restated First Lien Notes) (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).   |
| 10.2               | Counterpart for Additional Guarantors dated August 16, 2012, by NextWave Holdco LLC and NextWave Metropolitan Inc. (Amended and Restated Second Lien Notes) (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).  |
| 10.3               | Amended and Restated Parent Third Lien Guaranty, dated as of August 16, 2012, by and among NextWave Wireless Inc., NextWave Wireless LLC, NextWave Broadband Inc., NW Spectrum Co., AWS Wireless Inc., WCS Wireless License Subsidiary, LLC, Additional Guarantors as defined therein and Wilmington Trust, National Association (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).   |
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(incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).

- 10.9 Amended and Restated Intercreditor Agreement dated as of August 16, 2012, among NextWave Wireless LLC, NextWave Wireless Inc., NextWave Holdco LLC, their respective subsidiaries party thereto, the First Lien Note Holders party thereto, Wilmington Trust, National Association, as collateral agent for the First Lien Note Holders, the Second Lien Note Holders party thereto, Wilmington Trust, National Association, as collateral agent for the Second Lien Note Holders, the Parent Third Lien Note Holders party thereto, the Spinco Third Lien Note Holders party thereto, and Wilmington Trust, National Association, as collateral agent for the Parent Third Lien Note Holders and the Spinco Third Lien Note Holders (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012).

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|---------|--|
| 10.10   | Call Option/Note Redemption Agreement, dated as of August 16, 2012, among NextWave Wireless LLC, NextWave Holdco LLC, Wilmington Trust, National Association, as noteholder representative and the parties listed on Schedule A attached thereto (incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K filed August 23, 2012). |
| 31.1    | Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Frank Cassou.  |
| 31.2    | Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for Francis J. Harding.  |
| 32.1    | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, for Frank Cassou.  |
| 32.2    | Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, for Francis J. Harding.  |
| 101.INS | XBRL Instance Document*  |
| 101.SCH | XBRL Taxonomy Extension Schema Document*   |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase document*   |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase document*  |
| 101.LAB | XBRL Taxonomy Extension Label Linkbase document*   |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase document*  |

\* Users of this data are advised that pursuant to Rule 406T of Regulation S-T, this XBRL information is being furnished and not filed herewith for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and Sections 11 or 12 of the Securities Act of 1933, as amended, and is not to be incorporated by reference into any filing, or part of any registration statement or prospectus, of NextWave Wireless Inc., whether made before or after the date hereof, regardless of any general incorporation language in such filing.